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Mr Bates was not present

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SUPREME COURT OF THE UNITED STATES.

No. ~~281~~. 49 42.

WILLIAM GLASGOW, JR., AND WILLIAM C. TAYLOR, SURVIVING COMMISSIONERS OF THE 16TH SECTION IN TOWNSHIP 45 NORTH, OF RANGE 7 EAST, PL'FFS IN ERROR,

vs.

CHARLES J. CARPENTER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

G. S. GIDEON, Printer, 511 Ninth street, Washington.

SUPREME COURT OF THE UNITED STATES.

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INDEX.

	Original	Print.
Writ of error to U. S. Sup. Court	1	1
" " circuit court	2	2
Return on writ to circuit court	3	2
Petition	4	3
Summons	4, 5	4
Return on summons by sheriff	5	4
Demurrer	5	5
Demurrer and answer	7	5
Exhibit A, claim of Lacroix	9	6
Extract from registry of confirmation	10	8
Trial and judgment, and motion for new trial	13	10
Bill of exceptions	14	10
Act Congress 6th March, 1820	14	10
Appointment of commissioners by co. court	15	11
Field-notes, sec. 16	16	11
Plat town. 45	17	12
Hunt's proceedings on Lacroix's claim	18	13
Decision on Lacroix's claim	20	14
Survey No. 1,664	20	14
Plat of survey No. 1,664	22	15
Statement of interferences	25	16
Plaintiffs' instructions	29	18
Courts instructions on its own motion	30	19

	Original.	Print
Defendant's instructions	31	19
Agreement	33	20
Suggestion of Milburn's death	33	21
Order for rule, and rule	34	21
Return of service of rule	35	22
Appearance of defendant	35	22
Assignment of errors	35	22
Joinder	36	23
Argued and submitted, and judgment	36	23
Opinion supreme court	37	23
Bond on writ of error	37	24
Certificate of clerk	38	24
Citation and service	39	25
Assignment of errors	41	25

[L. S.] THE UNITED STATES OF AMERICA, *ss.*

The President of the United States to the honorable the Judges of the Supreme Court of the State of Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, at March term, A. D. 1859, between William Glasgow, jr. and William C. Taylor, surviving commissioners of 16th section, in township 45 north, of range 7 east, plaintiffs, and Charles J. Carpenter, defendant, a manifest error has happened, to the great damage of the said plaintiffs, as by their complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, this 10th day of June, in the year of our Lord one thousand eight hundred and fifty-nine.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the district of Missouri, dated as aforesaid.

BEN. F. HICKMAN,
Clerk C. C. U. S. Missouri District.

Allowed by William Scott, presiding judge of the supreme court within and for the State of Missouri, this 23d June, 1859.

WILLIAM SCOTT.

THE STATE OF MISSOURI, *ss.*

I, William S. Glanville, clerk of the supreme court of the State of Missouri, held at St Louis, in obedience to the command of the within writ, herewith send to the Supreme Court of the United States a full, true, and complete transcript of the record and proceedings in the case of William Glasgow, junior, and William C. Taylor, surviving commissioners of the 16th section, township 45 north, range

7 east, plaintiffs, against Charles J. Carpenter, defendant, as fully as the same remain of record and on file in my office.

In testimony whereof, I hereto set my hand and the seal [L. S.] of said court, at office in St. Louis, this day and year above written.

WM. S. GLANVILLE, *Ck.*

THE STATE OF MISSOURI, *ss.*

Be it remembered, that on the 19th day of February, 1858, there issued from the office of the clerk of the supreme court a writ of error, which is in words and figures as follows:

Writ of Error to Circuit Court.

THE STATE OF MISSOURI, *ss.*

The State of Missouri to the honorable the St. Louis Circuit Court in said State, greeting:

Whereas in the record and proceedings in a certain cause lately pending in the said court, wherein William Milburn, William Glasgow, and William C. Taylor, commissioners of the 16th section, in township 45, are plaintiffs, and Charles J. Carpenter, defendant, in a suit to recover land, manifest error hath intervened, to the great damage of said plaintiffs, as by their complaint we are informed:

Now, being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, command you, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said court, so that we may have them before us at our supreme court, to be begun and held in the city of St. Louis, county of St. Louis, in said State, on the third Monday in March next, so that our judges of our supreme court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right, and according to law, ought to be done.

Witness William S. Glanville, clerk of our said supreme [L. S.] court, at office in the city of St. Louis, the 19th day of February, in the year of our Lord 1858.

WM. S. GLANVILLE, *Clerk.*

Return on Writ.

Endorsed on said writ is the following:

STATE OF MISSOURI,
County of St. Louis, ss.

In obedience to the within writ, I herewith transmit a true and complete transcript of the record and proceedings in the within named cause.

In testimony whereof, I hereto set my hand and affix the [SEAL.] seal of said court, at office in the city of St. Louis, this 23d day of February, 1858.

STEPHEN RICE, *Clerk.*

The transcript of said record and proceedings attached to said writ was returned into the office of the clerk of the supreme court, and there filed on the 26 day of February, A. D. 1858, and is as follows, to wit:

STATE OF MISSOURI,
County of St. Louis, ss.

Be it remembered, that at the April term, 1855, of the circuit court within and for the county aforesaid, a transcript was filed, which is in the words and figures following, to wit:

STATE OF MISSOURI,
County of St. Louis, ss.

Be it remembered, that heretofore, to wit, on the fifteenth day of September, in the year of our Lord eighteen hundred and fifty-three, was filed in the office of clerk of the St. Louis land court in and for said county, a petition, which is in the words and figures following, to wit:

Petition.

WILLIAM MILBURN, WILLIAM GLASGOW, JR. and WILLIAM C. TAYLOR, commissioners of the sixteenth section of township forty-five north, range seven east, Plaintiffs, against CHARLES J. CARPENTER, Defendant. } In the S. Louis Land Court.

S. LOUIS COUNTY:

The plaintiffs state, that on the eleventh day of April, 1851, they were duly appointed commissioners as aforesaid by the St. Louis county court, pursuant to the provisions of an act entitled "An act to authorize the sale of fractional section sixteen, township forty-five north, range seven east," approved March 3d, 1851. That, as such commissioners, the plaintiffs were on the first day of January, 1853, lawfully entitled to the possession of that tract of land situate in St. Louis county, known and described as the fractional section sixteen of township forty-five north, in range seven east, according to the surveys of the public lands of the United States, and still continue so entitled; that afterwards, on the second day of January, 1853, the defendant had entered into said tract of land and enclosed with fences about thirty acres, parcel of said sixteen section, and still unlawfully withholds the possession

of such parcel from the plaintiffs, to their damage two hundred dollars.

The plaintiffs pray judgment for the possession of said parcel of land, and for the damages aforesaid, and for damages for the detention thereof, till the possession be delivered to them, &c. By their attorneys,

FIELD, WILLIAMS, & BATES.

Willis L. Williams, attorney for the plaintiffs, being duly sworn, on his oath, says that he believes the foregoing petition, and matters therein, as stated, to be true.

WILLIS L. WILLIAMS.

Sworn to and subscribed before me this 13th day of September, 1853.

Witness my hand and seal of office, at office, the day [SEAL.] and year first named.

CHARLES G. MONRO,
Notary Public, S. Louis County, Mo.

Summons.

Upon which a summons was issued as follows, to wit:

THE STATE OF MISSOURI.

To the Sheriff of St. Louis County, greeting:

We command you to summon Charles J. Carpenter to appear before the judge of our S. Louis land court on the first day of the next term thereof, to be held at the city of St. Louis, within and for the county of S. Louis, on the first Monday of October next, then and there to answer the complaint of William Milburn, William Glasgow, jr., and William C. Taylor, commissioners of the sixteenth section of township forty-five north, range seven east, as set forth in the annexed petition, and have you then and there this writ.

Witness Charles A. Mantz, clerk of said court, with [SEAL.] the seal thereof hereto affixed, at office in the city of S. Louis, this fifteenth day of September, in the year of our Lord one thousand eight hundred and fifty-three.

CHARLES A. MANTZ, *Clerk.*

Return of Sheriff on Summons.

Upon which the sheriff made his return, as follows, to wit:

Executed this writ in the county of St. Louis, on the 16th day of September, 1853, by leaving a copy of the writ and petition, as furnished by the clerk, at the usual place of abode of Charles J. Carpenter, the within named defendant, with a white person of the family above the age of fifteen years.

JOHN M. WIMER, *Sheriff.*
By THOS. CHADBURNE, *Deputy.*

Demurrer.

And afterwards, the following proceedings were had in said cause, to wit:

Tuesday, 11th October, 1853.

And now comes the defendant and demurs to the petition of the plaintiffs, for the following reasons:

First. Because the plaintiffs have not legal capacity to sue, in this: said act referred to in plaintiffs' petition, "approved March 3d, 1851," does not authorize plaintiffs to commence suit against adverse claimants, in their own names, to any portion of said fractional section sixteen.

That said petition does not show that plaintiffs are authorized to institute suit; that said act does not show or declare any title in the State, nor right to the possession of said section sixteen.

That said petition does not show for what purpose plaintiffs were appointed commissioners, nor for what purpose or reason, nor under what title or claim plaintiffs are entitled to the possession of said fractional section.

That said petition does not show any approval of the county court of St. Louis [county] authorizing plaintiffs to appoint or employ attorneys to prosecute suit, &c., according to the requirements of said act, and that said act [is] repealed by an act entitled "An act to provide for the organization, support and government of common schools in the State of Missouri," approved February 24th, 1853.

Secondly. Because the petition does not state facts sufficient to constitute a cause of action, in this: said petition does not state what part or parcel of said fractional section sixteen defendant had entered into and unlawfully withholds the possession from plaintiffs.

McLURE & GOODLETT,
Att'ys for Def't.

Demurrer Overruled.

And afterwards, the following further proceedings were had in this cause, to wit:

Wednesday, October 12th, 1853.

Now, at this day, come the parties, by their attorneys, and the demurrer of the defendant to the plaintiffs' petition being heard, and by the court fully understood, the court doth determine and adjudge that said demurrer be overruled.

Answer of Defendant.

And afterwards, the following further proceedings were had herein, to wit:

Saturday, October 15th, 1853.

Now appears the defendant, by attorneys, and files his answer to plaintiffs' petition, which is as follows:

The defendant, for answer, says that he knows nothing of the appointment of plaintiffs as commissioners, by the county court, as is stated in their petition, pursuant to the provision of an act referred [to] in plaintiffs' petition. Defendant is in possession of [a] tract of land in the Grand Prairie common-field of St. Louis, containing about thirty-six arpens, which is a part of a common-field lot of one arpen in front by forty arpens in depth; which common-field lot was confirmed to Louis Lacroix by act of Congress, approved 13 June, 1812, and by a supplementary act thereto, approved 26 May, 1824; which common-field lot was regularly, and according to requirements of said act of 1821, proved up and established before Theodore Hunt, recorder of United States land titles, on the 3d March, 1825, as appears by reference to an authenticated copy of said proof and certificate granted to said Lacroix hereto annexed, marked exhibit A, under and by virtue of which confirmation and proof certificate aforesaid, defendant is in possession of said tract of land; and under and by virtue of proper conveyances from the legal representatives and their assigns, and so on down to defendant, he is vested with the legal and lawful title to said tract of land.

Defendant does not know what portion of this tract of land conflicts with the said fractional sixteenth section mentioned in plaintiffs' petition, but believes it to be about twenty arpens, according to the supposed boundary lines of said section, but as to the correctness or incorrectness defendant knows nothing of these lines, or whether or not any sixteenth section has ever been located there.

Defendant denies that plaintiffs are now or *was*, on the first day of January, 1853, or at any other time, entitled to the possession of said tract of land mentioned, in this answer, or any part of it. Defendant denies that plaintiffs are entitled to any damages, as stated in their said petition.

McCLURE & GOODLETT,
Att'ys for Defendant.

Ch. J. Carpenter, being sworn, says the above is true, to the best of his knowledge and belief.

C. J. CARPENTER.

Sworn to and subscribed before me, this 14th day of October, 1853.

PETER W. JOHNSTONE,
Justice of Peace.

Exhibit A.—Transcript of Claim of Louis Lacroix.

Testimony relating to town and village lots, out-lots, and com-

mon-field lots, in adjoining or belonging to the several towns or villages of Portage de Sioux, St. Charles, St. Louis, St. Ferdinand, Villa a Robert, Carondelet, Ste. Genevieve, New Madrid, New Bourbon, Little Prairie, and Mine a Burton, in Missouri, and the village of Arkansas, in the Territory of Arkansas, as directed by an act of Congress, passed May 26th, 1824.

THEODORE HUNT,
Recorder of Land Titles.

March 3d, 1825.

Louis Lacroix, claiming one by forty arpens, a field-lot in Big Prairie, St. Louis, bounded on the north by Pierre Baribeau; south by Paul Legrandeur (alias Guitard); east and west by vacant land.

Pierre Baribeau, being duly sworn, says he knows said lot, and that the claimant cultivated the same thirty years ago, and continued to cultivate the same for ten or twelve consecutive years, and was in possession of the same ever since.

PIERRE his ⋈ mark. BARIBEAU.

Test: M. P. LEDUC.

Sworn to before me.

THEODORE HUNT.

See Hunt's minutes, No. , pages 1, 3, and 4.

OFFICE OF RECORDER OF LAND TITLES,
St. Louis, October 14th, 1853.

I certify that the above is correctly transcribed from the books on file in this office, containing the minutes of the testimony taken by Theodore Hunt, recorder of land titles in the State of Missouri, pursuant to the provisions of the first section of the act of Congress, approved on the 26 May, 1824, entitled "An act supplementary to an act passed the thirteenth day of June, one thousand eight hundred and twelve, entitled 'An act making further provision for settling the claims to lands in the Territory of Missouri.'"

ADOLPHE RENARD,
U. S. Recorder of Land Titles in the State of Missouri.

Extract from Registry of Confirmation.

Registry of Certificate of Confirmation on town-lots, out-lots, and common-field lots, issued by the recorder of land titles.

In whose name issued.	Dates.	Situation.	Remarks.	Quantity in arpens.
Louis Lacroix.....	March 3d, 1825.	St. Louis, Big Prairie.	Bounded on the north by Pierre Bairbeau; south by Paul Legranduer (alias Guitard); and east and west by vacant land.	One by forty.

OFFICE OF THE RECORDER OF LAND TITLES,
St. Louis, 14th October, 1853.

I certify that the above is correctly extracted from the original list on file in this office, made pursuant to the third section of the act of Congress of the 26 May, 1824, entitled "An act supplementary to an act passed on the 13th day of June, 1812, entitled 'An act making further provisions for settling the claims to land in the Territory of Missouri.' "

ADOLPHE RENARD,
U. S. Recorder of Land Titles in the State of Missouri.

Continuance.

And afterwards, the following further proceedings were had in this cause, on Saturday, October term, 1853: Cause continued until next term of court.

Afterwards, the following further proceedings were had in this cause, on Monday, 13th March, 1854:

And now, at this day, the defendant presents his petition for a change of venue, and satisfies the court that due notice of the presentation thereof has been given; and the said petition containing the allegation that the mind of the judge is prejudiced against the defendant's interest, and in favor of the plaintiffs in this cause, and that the judge of this court has been of counsel for the plaintiffs in this cause, touching the title to the land involved in this cause, to wit, the sixteenth section of township forty-five north, range seven east, and the same being supported by his affidavit, it is ordered by the court that the prayer of the petitioner be granted, and that the clerk of this court make out a full transcript of the record and proceedings in this cause according to law, and certify the same to the circuit court of St. Louis county; which petition is in words and figures as follows:

The defendant petitions the court for a change of venue and to certify this cause to the circuit court of said county of St. Louis, according to law, for the following reasons:

First, because the mind of the judge is prejudiced against said defendant's interest, and in favor of said plaintiffs in this cause.

Second, because the judge of this court has been of counsel for the plaintiffs in this cause touching the title of the land involved in this cause, to wit, the sixteenth section of township forty-five north, range seven east.

McCLURE & GOODLETT,
Att'ys for Def't.

Defendant, Charles J. Carpenter, makes oath and says, that the above petition and the matters therein, as stated, he believes to be true, and that he has just cause to believe that he cannot have a fair trial on account of the causes alleged in the above petition.

C. J. CARPENTER.

Sworn to and subscribed before me the 11th day of March, 1854.
CHA'S A. MANTZ, *Clerk.*

STATE OF MISSOURI,
County of St. Louis, ss.

I, Charles A. Mantz, clerk of the St. Louis land court in and for said county, certify the foregoing to be a full transcript of the record and proceedings in the cause wherein William Milburn, William Glasgow, jr., and William C. Taylor, commissioners of the sixteenth section of township forty-five north, range seven east, are plaintiffs, and Charles J. Carpenter is defendant, as the same remains of record in my office.

In testimony whereof, I hereto set my hand and affix the seal of said court at office in the city of St. Louis this 29th day of August, A. D. 1854.
[SEAL.]

CHARLES A. MANTZ, *Clerk.*

Continued.

And afterwards, the following proceedings were had in St. Louis circuit court at the October term, 1855, to wit: This cause is continued, awaiting decision of case in supreme court.

Continued.

And afterwards, at the March term, 1856, this cause was again continued to the succeeding term.

Continued.

And afterwards, at the October term, 1856, this cause was again continued to succeeding term.

Continued and day set for Trial.

Afterwards, on motion of the parties herein, it is ordered by the court that this cause be continued and set for the second Monday of the next term *term* of this court.

And afterwards, at the October term, 1857, on the 17th day of October, 1857, the following further proceedings were had herein, to wit:

Now, at this day come again said parties by their respective attorneys, and thereupon come also a jury, to wit: N. Barnum, Henry Bischoff, Michael Cook, Frederick Meyer, Peter Meyer, William Nally, Herman Meyer, G. Hermann, Sand G. Bull, Charles M. O'Hara, Ladden Davis and George W. Fischer, twelve good and lawful men, who being duly elected, tried and sworn the issues herein joined well and truly to try, the trial of this cause progressed; and being finished, the jurors aforesaid, on their oaths aforesaid, find the issue herein joined in favor of said defendant. It is therefore considered by the court, that said plaintiffs recover nothing by their said suit in this behalf, but that said defendant go hence without day, and recover of said plaintiffs his costs and charges in this behalf expended, and have thereof execution.

Motion for New Trial.

And afterwards, during same term, to wit, on the 19th day of October, 1857, the following further proceedings were had herein, to wit:

Now, at this day come the plaintiffs and file a motion for a new trial in this cause.

Motion for a New Trial Overruled.

And afterwards, during said term, to wit, on the 30th day of November, 1857, the court overruled the motion for a new trial in this cause. Thereupon the plaintiffs filed their bill of exceptions, which is in words and figures as follows, to wit:

Bill of Exceptions.—Plaintiffs' Case.—Act Congress, 6 March, 1820.

This cause was tried by a jury on the 16th day of October, 1857. On the trial the plaintiffs, to maintain the issue on their part, gave in evidence the act of Congress approved March 6th, 1820, entitled "An act to authorize the people of the Missouri Territory to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States, and to prohibit slavery in certain Territories;" also an ordinance of the people of the State of Missouri passed in convention on the 19th day of July, 1820, entitled "An ordinance declaring the assent of the people of the State of Missouri, by their representatives in convention assembled, to certain conditions and provisions in the act

of Congress of the 6th of March, 1820, entitled An act to authorize the people of Missouri Territory to form a constitution and State government, and for the admission of such State into the Union on equal footing with the original States, and to prohibit slavery in certain Territories." And also an act of the general assembly of the State of Missouri, approved March 3d, 1851, entitled "An act to authorize the sale of fractional section sixteen, township forty-five north, range seven east." The plaintiff then read in evidence the record of St. Louis county court appointing the plaintiffs commissioners under the last mentioned act, as follows:

Appointment of Comm'rs by Co. Court.

In the St. Louis County Court, April 11th, 1851.

STATE OF MISSOURI,
County of St. Louis, ss.

The court appoint William Milburn, William Glasgow, jr., and William C. Taylor, commissioners to take possession of section number 16, township 45 north, range 7 east, and to sell the same, or any part thereof, on such terms and in such manner as the court shall hereafter direct The said commissioners having all powers, and subject to all the restrictions of the act of the general assembly of the State of Missouri, entitled "An act to authorize the sale of fractional section sixteen, township forty-five, range seven east," approved March 3d, 1851.

STATE OF MISSOURI,
County of St. Louis, ss.

I, Josiah Thornburgh, clerk of the county court within and for the county of St. Louis, hereby certify that the foregoing is a true copy from the record of aforesaid court in my office.

In testimony whereof, I hereto set my hand, and affix the seal of said court, at office, in the city of St. Louis, this 29th day of September, 1857.

[SEAL.]

JOSIAH THORNBURGH, *Clerk.*

Section 16—*Field-notes.*

The plaintiffs then read in evidence the field-notes of Brown's survey of fractional section sixteen, made in 1818, as follows:

Field-notes of section 16, township 45 north, range 7 east.

From a point in widow Camp's N. boundary, 15.75 westerly of Pettier's west line, where set a post, from which a b. o., 3 in. diam., bears N. 30 W., 58 l.; and a do., 3 in. diam., bears S. 19 W., 100 l.; north, between secs. 15 and 16, T. 45 N., R. 7 E., 9.53, sec. ¼, set post, from which a w. o., 3 in. diam., bears N. 2 E., 25 l.; and a do., 3 in. diam., bears N. 89 E., 21 l.; 29.53, the west edge of a pond, 2 chs. wide; 49.50, set post corner to

secs. 9, 10, 15 and 16, in a mound; west, between secs. 9 and 16, T. 45, R. 7 east; 40.00 set ¼ sec. post in hazel thicket; 80.00, set post corner to secs. 8, 9, 16 and 17, in a hazel thicket, mound; land lies well, good soil, und. g'th hazel and bushes; south, between secs. 16 and 17, T. 45 N., R. 7 E.; 40.00, set ¼ sec. post in mound; 42.00, a branch, 5 l., bears southerly; 44.00, left branch, bearing S. E.; 51.00, a spring branch bears east; 57.69, intersected E. Yoste's 80 arps. tract, 7 chs. W. of his N. E. corner on Chouteau, set stone; land gently rolling prairie.

OFFICE OF SURVEYOR GENERAL
FOR ILLINOIS AND MISSOURI,
St. Louis, October 9th, 1857.

The above is a correct from book 23, pages 180 to 180, of the field-notes of Missouri surveys on file in this office, of the original field-notes of the lines between sections 15 and 16, 9 and 16, and 16 and 17, of township 45 north, range 7 east of the 5th principal meridian, as said lines were surveyed in 1818 by J. C. Brown, under contract of 31 March, 1817.

JNO. LOUGHBOROUGH,
Surveyor General.

Plat of Town. 45.

The plaintiffs then exhibited in evidence an authenticated plat of township 45 north, range 7 east, as certified by the surveyor general of Ills. and Mo. the 17th of June, 1845, to be a true copy, and an authenticated plat and description of the survey of the out-boundary of the town of St. Louis, as established by the surveyor general. It was agreed between the parties that authenticated copies of the foregoing township and out-boundary plats from the office of the surveyor general, or the General Land Office at Washington, may be read before any appellate court to which the case may be carried, with like effect as if the same were set forth in this bill of exceptions at large. The defendant admitted that the land in controversy lay without the exterior limits of said out-boundary survey. The defendant further admitted, that at the commencement of this suit he was in possession of a part of said fractional sixteenth section, as stated in his answer. The plaintiffs then rested.

Defendant's Case.

The defendant, to maintain the issue on his part, read in evidence the act of Congress entitled "An act making further provisions for settling claims to land in the Territory of Missouri," approved June 13th, 1812; and also the act of Congress entitled "An act supplementary to an act passed on the 13th day of June, 1812, entitled 'An act making further provision for settling the claims to land in the Territory of Missouri,' approved May 26th, 1824."

Proceedings of Recorder Hunt in reference to Claim of Lacroix's Rep's.

The defendant then offered in evidence the proceedings of Recorder Hunt under said act of May 26th, 1824, in respect to the claim of Lacroix's representatives. The plaintiffs objected to the reception of said evidence, and insisted that the same was incompetent—

First, because, in so far as said proceedings can in any wise affect the land now in controversy, the same were had, and the proofs therein taken without any notice to the State of Missouri to the inhabitants of township 45, range 7, or to the plaintiffs.

Second, because said proceedings, so far as they affect the land in dispute, were repugnant to the Constitutions of the United States and of this State, and in derogation of the sovereignty of the latter. The court decided that the proffered evidence was competent and legal, and permitted the same to be read to the jury. To such action of the court the plaintiffs duly excepted. The said proceedings and proofs were then read to the jury as follows. (See ante .)

Defendant then offered in evidence the authenticated copy of list from surveyor general's office, of the confirmation furnished that office by the recorder of land titles, which is as follows:

(4.)

No. 4. Louis Lacroix.	1825. February 13.	March third.	St. Louis Big Prairie.	Bounded on the north by Pierre Baribeau, south by Paul La Grandeur alias (Guitard,) and east by vacant land, and west by vacant land.	Arpens, one by forty.

RECORDER'S OFFICE,
St. Louis, October 15, 1827.

I, Theodore Hunt, recorder of land titles in the State of Missouri, do certify the foregoing record, contained in forty-seven pages, commencing with Louis Lemond and ending with the field lot of Titus Strickland, contains all the village lots, out-lots, and common-field lots, the boundaries of which have been proven before me under the provisions of an act of Congress, approved 26th May, 1824, entitled "An act supplementary to an act passed on the thirteenth day of June, 1812, entitled 'An act making further provision for settling the claims to land in the Territory of Missouri.'"

(3.) THEODORE HUNT.

OFFICE OF SURVEYOR GENERAL,
St. Louis, March 12, 1857.

I certify that the foregoing is correctly transcribed from the list on file in this office, which was transmitted to the surveyor general by Theodore Hunt, recorder of land titles, as prescribed by the 3d section of the act of Congress, approved on the 26th May, 1824, entitled "An act supplementary to an act passed on the 13th day of June, 1812, entitled 'An act making further provision for settling claims to land in the Territory of Missouri.'"

JNO. LOUGHBOROUGH,
Surveyor General.

The defendant then tendered in evidence a paper purporting to be a survey, duly certified by the surveyor general, of the lot of Lacroix's representatives, as proved before Recorder Hunt, in the proceedings just before set forth, and being U. S. survey No. 1,664.

The plaintiffs objected to the reception of said paper, because, 1st. The survey, in manner and form as the same appeared to have been made, was not authorized by law. 2d. Said survey embraced the land in controversy, which the United States has absolutely sold and granted to the State of Missouri more than thirty years before the date of such survey.

Decision of Court as to Lacroix's Survey.—Exception by Plaintiffs.

The court decided that such paper was good and competent evidence, and permitted the same to be read to the jury. To such action of the court the plaintiffs duly excepted. Said paper was then read, as follows:

Survey No. 1,664.—Survey No. 1,664.

Plat and description of the survey of a tract of land of 34.11 acres, situate in the Grand Prairie common-field of St. Louis, in township 45 north, of the range seven east, of the 5th principal meridian, in the State of Missouri, executed in the years 1850 and 1855, by William H. Cozens, deputy surveyor, under instructions from the surveyor general for Illinois and Missouri, dated 10th May, 1846, and the 22d February, 1855. This being the tract of one by forty arpens confirmed to Louis Lacroix, by the act of Congress of the 13th of June, 1812, entitled "An act making further provisions for settling the claims to land in the Territory of Missouri." The extent and boundaries whereof were proven on the 3d of March, 1825, before Theodore Hunt, United States recorder of land titles in the State of Missouri, in conformity with the provisions of the act of Congress of the 26th May, 1824, entitled "An act supplementary to an act passed on the 13th day of June, 1812, entitled 'An act making further provisions for settling the claims

to land in the Territory of Missouri.' " See Recorder Hunt's minutes, book No. 1, pages 3 and 4, in the office of the recorder of land titles; see also Hunt's lists, No. 4, in the office of the surveyor general.

T. 45 N., R. 7 E., of the 5th principal meridian.

[*For plat see original, page* 22.]

Description: Beginning at a stone, fifteen inches long, eight inches wide, four inches thick, the southeast corner of Pierre Barribeau's survey numbered 1,663, and the northeast corner of this survey; thence south 28° 45′ west, two chains and ninety-one and two-thirds links to a point in the middle of the Olive street plank road, the northeast corner of survey number 1,665, in the name of Louis Laroche's legal representatives, and the southeast corner of this survey; thence north 61° west, with the northern boundary of the Louis Laroche survey, and with the middle line of the Olive street plank road, at four chains and eighty-five links the eastern edge of Grand Avenue, at six chains and seven links the western edge of Grand Avenue, at seven chains and thirty-one links the toll-gate of the road, at forty-six chains and twenty links a culvert over a branch, five links wide, running southwest, at sixty-five chains and sixty-one links a cedar post, at the intersection with the west boundary of section 16, in township 45 north, range seven east, which is also a line of survey numbered two thousand seven hundred and twelve, in the name of James Conway, or legal representatives, at seventy-five chains and ninety links a culvert over a branch five links wide, running southwest, at one hundred and thirteen chains and twelve links a stone twenty and a half inches long, six inches wide, three and a half inches thick, at the intersection with the west boundary of the James Conway survey, which is also a line of survey, numbered 2,500, in the name of Joseph Hunot, or legal representatives, from which the northwest corner of the James Conway survey, and the southwest corner of survey numbered 2,692, in the name of Joseph Genereux, or legal representatives, bears north, fifty-seven links distant; and at 116 chains and ninety-one links a stone ten inches long, seven and a half inches wide, four inches thick, the northwest corner of the Louis Laroche survey, and the southwest corner of this survey; thence north 28° 45′ east, at 2 chains and 91⅔ links, a stone 10½ inches long, eight and a half inches wide, and three inches thick, the southwest corner of the Pierre Barribeau survey, and the northwest corner of this survey; thence south 61° east, with the southern boundary of the Pierre Barribeau survey, at two chains and twelve links a stone nine inches long, six inches wide, four inches thick, at the intersection with the line between the Joseph Genereux and

the Joseph Hunot surveys, from which the northwest corner of the James Conway survey and the southwest corner of the Joseph Genereux survey bears southerly two chains and seventy-eight links distant, at seven chains and 82 links a stone 11 inches long, seven inches wide, three inches thick, at the intersection with the line between the Joseph Genereux and the James Conway surveys, from which the corner common to said surveys, in the line of the Joseph Hunot surveys, bears westerly five chains and two links distant, at twelve chains and 86 links a point in the middle of the Olive street plank road; at 42 chains and 22 links a branch, five links wide, runs southwest, at 49 chains and 62 links a stone 13 inches long, nine inches wide, and five and a half inches thick, at the intersection with the west boundary of section sixteen, which is also a line of the James Conway survey, from which the northwest corner of section sixteen and a corner to the James Conway survey bears northerly eight links distant; at seventy-one chains and twelve links a branch, five links wide, runs southwest; at 82 chains and 79 links a branch, five links wide, runs southwest; at 110 chains and 96 links the western edge of the Grand Avenue; at 112 chains and 16 links the eastern edge of Grand Avenue, and at 116 chains and 98 links the beginning corner.

Statement of Interferences.

Statement of the interferences of survey No. 1,664 with other surveys previously made.

The following surveys are founded upon certificates issued by Frederick Bates, United States recorder of land titles in the Territory of Missouri, under the provisions of the act of Congress of the 17th of February, 1815, entitled "An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who suffered by earthquakes."

1. Survey No. 2,500, certificate No. 161, issued to Joseph Hunot, or legal representatives, for 480 acres, on the 12th of August, 1816, located on the 16 June, 1818, by Rufus Eastan, surveyed by Joseph C. Brown on the 23d of June, 1819. Patent certificate No. 404 issued on the 2d of February, 1833, by the recorder of land titles in the State of Missouri. Area of the interfering part, 0.86 acres.

2d. Survey No. 2,692, certificate No. 19, issued to Joseph Genereux, or legal representatives, for 160 acres, on the 12th of November, 1815, located by Joshua Barton on the 12th of December, 1817, surveyed by Joseph C. Brown on the 23d of June, 1819. Patent certificate No. 318, issued by the recorder of land titles on the 4th February, 1823. Area of the interfering part = 0.70 acres.

3d. Survey No. 2,712, certificate No. 348, issued to James Conway, or legal representatives, for 200 arpens on the 20 of November, 1817, located on the 16th of June, 1818, by Taylor Berry and

Matthias McGirk, surveyed by Joseph C. Brown on the 23d June, 1819. Patent certificate No. 322, issued by the recorder of land titles on the 20 of May, 1823. Area of the interfering part = 13.16 acres.

4. Section 16 reserved for the schools, surveyed in the year 1818 by Joseph C. Brown. Area of the interfering part = 19.39 acres.

OFFICE OF THE SURVEYOR GENERAL OF
ILLINOIS AND MISSOURI,
St. Louis, 17 *July*, 1857.

The foregoing plat and description of survey No. 1,664 are correctly copied from the approved plat and description of said survey, recorded on pages 283 and 290 of record-book F, on file in this office.

JNO. LOUGHBOROUGH,
Surveyor General.

To ADOLPHE RENARD, Esq.,
U. S. Recorder of Land Titles.

RECORDER'S OFFICE, *St. Louis*, 8 *September* 1857.

I have this day issued confirmation certificate No. 145, on the foregoing survey, according to law and instructions.

ADOLPHE RENARD,
U. States Recorder Land Titles in the State of Missouri.

Defendant then gave in evidence the following confirmation certificate, accompanied by a survey, which was a copy of the aforesaid United States survey, to wit:

OFFICE OF THE RECORDER OF LAND TITLES,
St. Louis, 8 *September*, 1857.

Confirmation Certificate, No. 145.

It is hereby certified, that under the first section of the act of Congress, approved on the 13th of June, 1812, entitled "An act making further provision for settling the claims to land in the Territory of Missouri," and the two acts of Congress of the 26 May, 1824, and 27 January, 1831, supplemental or having reference thereto, Louis Lacroix was confirmed in his claim to a tract of land of one by forty arpens, situate in the Grand Prairie common-field of St. Louis.

It is further certified, that the same has been lawfully surveyed in conformity with said confirmation in the said common-field, being in township 45 north of the base line, range 7 east of the 5th principal meridian, in the State of Missouri, as appears from the accompanying plat and transcript of survey, numbered 1,664, authenticated and returned on the 17th July, 1857, to this office, by

John Loughborough, surveyor general for the district of Illinois and Missouri, to wit: beginning at A on the plat, the northeast corner of the survey, and running thence south 28° 45′ west, with the eastern line of the survey, 2 chains 91⅔ links to its southeast corner; thence north 61° west, with the southern line of the survey, 116 chains 91 links to its southwest corner; thence north 28° 45′ east, with the western line of the survey, 2 chains 91⅔ links to its northwest corner, and thence south 61° east, with the northern line of the survey, 116 chains 98 links to the beginning corner; all in English measure. Said survey, No. 1,664, contains $34\frac{11}{100}$ acres. It is further certified, that the whole area of said survey No. 1,664 is interfered with by surveys previously executed, viz: to the amount of $19\frac{39}{100}$ acres in section 16, reserved for the schools, and in the following surveys of locations, under the act of Congress of the 17th of February, 1815, entitled "An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who suffered by earthquakes," to wit: to the amount of $0\frac{85}{100}$ of an acre in survey No. 2,500, under certificate No. 161, issued to Joseph Hunot, or legal representatives, for 480 acres; of $0\frac{7}{100}$ of an acre in survey No. 2,692, under certificate No. 19, issued to Joseph Genereux or legal representatives, for 160 acres, and of $\frac{16}{100}$ acres in survey No. 2,712, under certificate No. 348, issued to James Conway or legal representatives, for 200 arpens.

In testimony whereof, I have hereunto set my hand, on the day and in the year above written.

ADOLPHE RENARD,
U. S. Recorder of Land Titles in the State of Missouri.

Recorded at page 143 of Confirmation Certificates.

No further evidence was given on either side.

The plaintiffs requested the court to give to the jury the following instructions, and each of them:

Instructions asked by Plaintiffs.

1. The jury are instructed that the several matters of proofs adduced by the plaintiffs, if genuine, are effectual to show that the title to the land in dispute was vested in the State of Missouri on the 19th day of July, 1820, and that the same title has become vested in the plaintiffs.

2. The jury are further instructed, that the proceedings and proofs before Recorder Hunt, under the act of Congress of 26 May, 1824, read in evidence by defendant, have no force or effect as against the title of the State of Missouri, acquired in the year 1820.

3. The jury are further instructed, that the survey of the outboundary read in evidence, is to be considered by them as the offi-

cial and authenticative [authoritative?] survey of the out-boundary directed to be run by the act of Congress of the 13th of June, 1812, binding on all parties claiming a confirmation by force of the first section of said act; and that all the evidence adduced by the defendant to shew that the lot of Lacroix was situated on the land in controversy, outside of the out-boundary as marked by such survey, ought to be disregarded by the jury.

The court refused to give the said instructions or either of them, and to such refusal the plaintiffs duly excepted. The court on its own motion gave the following instructions:

Instruction given by the Court on its motion.

By virtue of [the] act of Congress of March 6th, 1820, and the ordinance declaring the assent of the people of the State of Missouri thereto, dated 19th July, 1820, whatever title the United States may have had in the land described in the plaintiffs' petition at the time of the passage of that act, if it be the sixteenth section or a fractional part thereof, passed to and vested in the State of Missouri for the use of schools, and by the act of the legislature of this State, approved March 3d, 1851, and the order of the county court read in evidence, if you find that order genuine, the plaintiffs have the right to sue for said land; and if you find that defendant at the commencement of this suit, *the defendant* was in the possession of any portion of said land, you should find for the plaintiffs, unless you believe defendant has shown a better title as hereinafter mentioned.

So far as this case is concerned, the defendant admits that the commencement of this suit he was in the possession of [a] portion of the premises described in the petition, and the plaintiffs admit that whatever title to the land in the possession of defendant may have been at any time vested in Louis Lacroix, was at the commencement of this suit, and now is vested in the defendant.

The court then on motion of the defendant, gave the following instructions:

Instructions asked by Defendant and given.

1. If the jury find from the evidence that a tract of land of which the premises in possession of the defendant, at the commencement of this suit, are a part, was cultivated by Louis Lacroix prior to the 20 December, 1803; that said Louis Lacroix was, at the time of such cultivation, an inhabitant of the town of St. Louis; that said tract of land was situated in the Grand Prairie, in the neighborhood of said town, and was used by said Lacroix for the purposes of cultivation, and was one of a series of lots of similar form and character, also used by the inhabitants of said town for the purposes of cultivation, and lying adjoining to

each other in the same general range of lots, then the plaintiffs are not entitled to recover.

2. If the jury find from the evidence that on the 3d day of March, 1825, Louis Lacroix designated the lot of which the premises in possession of the defendant, at the commencement of this suit, are a part, as being confirmed to him by the act of Congress of the 13th of June, 1812, entitled An act making further provisions for settling claims to land in the Territory of Missouri, on the ground of inhabitation, cultivation, or possession, prior to the 20th day of December, 1803, by proving before the recorder of land titles of said Territory the fact of his cultivation and possession thereof, and the boundaries and extent of said lot, and that said recorder did thereupon issue a confirmation certificate for said lot to said Louis Lacroix, and furnish the surveyor general of said Territory with a list of the lots so proved, in which list was that of the said Lacroix, which lot was afterwards surveyed by the surveyor general, and the survey thereof approved by him on the 18 day of March, 1857, and on the 17th day of March, 1857, returned by him to the office of said recorder, who, on the first day of August, 1857, issued his certificate of confirmation therefor, then the plaintiffs cannot recover in this suit.

To the giving of the aforementioned instructions the plaintiffs duly excepted. The jury found a verdict for the defendant.

Within four days the plaintiffs made the following motion for a new trial.

The plaintiffs move for a new trial, for the following reasons:

1. That the court on the trial admitted incompetent and illegal evidence for the defendant, prejudicial to the plaintiffs.

2. That the court misdirected the jury in matter of law arising on said trial.

FIELD, *for Paintiffs.*

The court overruled said motion, and the plaintiffs duly excepted.

Agreements.

It is agreed that the public acts referred to in the foregoing bill of exceptions may be read in any appellate court from any printed copy published by authority.

It is further agreed that the amount in controversy in this case exceeds two thousand dollars.

This bill of exceptions allowed.

JAS. R. LACKLAND,
Judge.

STATE OF MISSOURI,
County of St. Louis, ss.

I, Stephen Rice, clerk of the circuit court within and for the county aforesaid, certify the foregoing to be a true transcript of the record and proceedings in the above entitled cause, as fully as the same now remain on file in my office.

In testimony whereof I hereunto set my hand and affix the seal of said court, at office, in the city of St. Louis, this 27th day of January, 1858.

[SEAL.]

STEPHEN RICE, *Clerk.*

Afterwards, in said supreme court, at the March term, 1858, the following proceedings were had in this cause, to wit:

Suggestion of death of Commissioner Milburn.

The said William Glasgow, junior *and the said William Glasgow, junior* and the said William C. Taylor, come now and suggest, that since the return of the writ of error in this cause, and before an assignment of errors herein, the said William Milburn has departed this life, and they now move this court to grant a rule upon the above mentioned defendant in error, to show cause on the first day of the next term of this court, or as soon thereafter as counsel can be heard, why the writ of error in this case should not be prosecuted in the name of the surviving plaintiffs, said Glasgow and Taylor.

R. M. FIELD,
For Comm'rs, with Messrs. Bates.

Rule granted and Cause continued.

Which said motion was sustained and a rule ordered by the court, and the cause continued till the next term.

Afterwards, on the 3d of September, 1858, there issued from the office of the clerk of the supreme court a rule, in words and figures as follows:

Rule.

THE STATE OF MISSOURI, *ss.*

The State of Missouri to the Sheriff of Saint Louis county, in said State, greeting:

Whereas in the case of William Milburn, William Glasgow, jr., and William C. Taylor, commissioners of the sixteenth section, township forty-five north, range seven east, plaintiffs in error, against Charles J. Carpenter, defendant in error, it has been suggested to our said supreme court, at the March term, 1858, that since the return of the writ of error in said cause into said supreme court, and before an assignment of errors had been filed in said cause, the said William Milburn has departed this life:

These are, therefore, to command you, that you summon Charles J. Carpenter, said defendant in error, to be and appear before our said supreme court on the first day of the next term thereof, to be begun and held at the court-house in the city of St. Louis, on the third Monday in October next, to show cause, if any he *he* have, why the writ of error in the aforesaid cause should not be prosecuted in the name of the surviving plaintiffs in error, the said William Glasgow, jr., and the Said William C. Taylor, commissioners aforesaid. And have you then there this writ, with your return endorsed thereon.

In testimony whereof I have hereunto set my hand and the seal of said court at office, in St. Louis, this 3d [SEAL.] day of September, A. D. 1858.

WM. S. GLANVILLE, *Clerk.*

Return of Service.

Said rule was duly returned, endorsed as follows:

Executed this writ in St. Louis county, on the 9th day of September, 1858, by delivering a copy of the same, as furnished by the clerk, to Trusten Polk, att'y for def't in error.

M. S. CERRE, *Sh'ff.*
By GEO. N. STEVENS, *Deputy.*

Appearance of Def't.

Afterwards, at the October term, 1858, the following further proceedings were had herein, to wit:

Now appears the said Charles J. Carpenter, by his attorney, and consents that this cause be revived and prosecuted in the name of the aforesaid surviving commissioners, the said William Glasgow, jr., and William C. Taylor.

Afterwards, the plaintiffs in error, by attorney, appeared at the term aforesaid, and filed an assignment of errors, as follows:

Assignment of Errors.

And now come the said surviving plaintiffs in error, and say that, in the record and proceedings and judgment in this case, it does manifestly appear that the court below committed the following errors:

1. In admitting illegal evidence to the jury on the part of the defendant below.

2. In refusing apt and proper instructions to the jury, moved for on behalf of the plaintiffs below.

3. In giving to the jury improper and illegal instructions, to the great prejudice of the plaintiffs below.

4. In rendering judgment for the *plaintiffs* below, instead of rendering the same for the plaintiffs below.

5. In various other particulars patent on the record.

Wherefore the plaintiffs in error pray that the judgment below may be reversed, and that they may be restored to their just rights, &c.

By their Attorneys, BATES & FIELD.

Joinder in Error.

Thereupon the cause was continued until the next term.

And at the March term, 1859, the defendant in error joined in error as follows: The defendant in error joins in error, and says there is no such error.

C. C. McCLURE & T. POLK,
For Defendant in Error.

Argued and Submitted.

Afterwards, during said term, this cause was argued in behalf of the respective parties, by their attorneys, and submitted to the court for decision.

Judgment Sup. Court.

Afterwards, and during said term, and on the 27th day of May, A. D. 1859, the court rendered judgment in this cause in the following words, to wit:

WILLIAM GLASGOW, Junior, and WILLIAM C. TAYLOR, surviving commissioners of the 16th section, township 45 north, range 7 east, of the 5th principal meridian, Plaintiffs in Error, against CHARLES J. CARPENTER, Defendant in Error.	Error to St. Louis Circuit Court.

Now at this day come the parties herein, by their respective attorneys, and the court here being now sufficiently advised of and concerning the premises, do consider and adjudge that the judgment aforesaid, in form aforesaid by said circuit court rendered, be in all things affirmed and stand in full force and effect. And it is further considered and adjudged by the court, that the said defendant in error recover against said plaintiffs in error his costs and charges herein expended, and have execution therefor.

Opinion of Sup. Court.

And at the same time the court gave a written opinion in words as follows:

This case involves precisely the same question determined in the

case of Milburn and others vs. Hardy, at the present term. The judgment is consequently affirmed. The other judges concur.

W. B. NAPTON.

Bond on Writ of Error to U. S. Sup. Court.

Afterwards, on the 23d of June, 1859, a bond was filed in this case in words and figures as follows:

Know all men by these present, that we, James A. Rogers and R. M. Field, are held and firmly bound unto Charles J. Carpenter, in the full and just sum of five hundred dollars, to be paid to the said Charles J. Carpenter, his heirs, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this 23d day of June, in the year of our Lord one thousand eight hundred and fifty-nine.

Whereas lately, at the March term, 1859, of the supreme court of the State of Missouri, in a suit depending in said court between William Glasgow, jr., and William C. Taylor, surviving commissioners of the 16th section, in township 45 north, of range 7 east, plaintiffs, and Charles J. Carpenter, defendant, judgment was rendered against the said plaintiffs, and the said plaintiffs having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said defendant, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next: Now the condition of the above obligation is such, that if the said plaintiffs shall prosecute said writ of error to effect, and answer all damages and costs if they fail to make good their plea, then the above obligation to be void, else to remain in full force and effect.

JAS. A. ROGERS, [SEAL.]
R. M. FIELD. [SEAL.]

Approved by William Scott, presiding judge of the supreme court, within and for the State of Missouri, this 23d day of June, 1859.

WILLIAM SCOTT.

THE STATE OF MISSOURI, *ss.*

I, William S. Glanville, clerk of the supreme court of the State of Missouri, held at St. Louis, certify the foregoing to be a full, true and complete transcript of the record and proceedings of said supreme court in the case of William Glasgow, junior, and William C. Taylor, surviving commissioners of the 16th section, township 45 north, range 7 east, plaintiffs, against Charles J. Carpenter, defendant, as fully as the same remain of record and on file in my office.

In testimony whereof, I hereto set my hand and the [SEAL.] seal of said court, at office in Saint Louis, this third day of September, A. D. 1859.

WM. S. GLANVILLE.
Clerk.

Filed 9th Dec., 1859.

Citation.

THE UNITED STATES OF AMERICA,

To CHARLES J. CARPENTER, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of Missouri, wherein William Glasgow, jr., and William C. Taylor, surviving commissioners of 16th section, in township 45 north, of range 7 east, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William Scott, presiding judge of the supreme court of the State of Missouri, this 23d day of June, in the year of our Lord one thousand eight hundred and fifty-nine.

WILLIAM SCOTT.

Received a copy of the within citation, which is hereby acknowledged as service of the same on me, as if served by the proper officer.

St. Louis, Mo., October 26th, 1859.

C. C. McLURE,
Att'y for Def't.

Assignment of Errors.

In the Supreme Court of the United States—December Term, 1859.

WILLIAM GLASGOW, Jr., and WILLIAM C. TAYLOR, surviving commissioners, &c., Plaintiffs in Error,
vs.
CHARLES J. CARPENTER, Defendant in Error.

And now come the said plaintiffs in error, and for errors in the record of the judgment and proceedings below, assign the following, viz:

1. The court below admitted improper and illegal evidence to the jury, in prejudice of the rights of the plaintiffs in error, and notwithstanding their objections to the same.

2. The court below gave improper and illegal instructions to the jury, to the prejudice of the plaintiffs in error.

3. The court below refused proper and legal instructions, moved on behalf of the plaintiffs in error, to their great prejudice.

4. The court below gave judgment for the defendant in error, whereas it is manifest from the record, that judgment should have been given for the plaintiffs in error.

Wherefore the plaintiffs pray for a reversal of the judgment below, and to be restored to their just rights.

By their attorney,

L. G. PICOT.

Filed 9th December, 1859.

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SUPREME COURT OF THE UNITED STATES.

No. 41.—DECEMBER TERM, 1861.

WM. GLASGOW, JR., ET AL., PLAINTIFFS IN ERROR,

vs.

JOHN B. HORTIZ, DEFENDANT IN ERROR,

ALSO,

No. 42.—THE SAME vs. CHAS. J. CARPENTER.
No. 43. " vs. ELZEAR BLANCHARD.
No. 44. " vs. JOHN HOGAN.
No. 45. " vs. JAMES A. HARDY.
No. 46. " vs. CHRISTOPHER McCLURE.

Additional Brief for Plaintiffs in Error:

By EDWARD BATES.

In continuation of the subject of the out-boundary of the town, see map X. By this, it appears that the land in question lies outside of the out-boundary of the town, as surveyed under the act of 1812, and outside of the limits of the corporation, as designated in 1809; yet, the defendant, while this is obvious to the eye upon the map, and admitted upon the record, still insists that the land he claims, though clearly not *within nor adjoining* the town, did, nevertheless, *belong* to the town. If that were so, it was for him to show it. The jury even did not find it as a fact. Indeed, they could not so find it; for the phrase, "*belonging to the town,*" as used in the act of 1812, does not imply *ownership or proprietary right*, but *jurisdiction and governmental control.* Neither did the court find it as matter of law. There is no such finding by court or jury in the case. (See the Record, pp. 8, 9.)

This question of out-boundary has never been passed upon by

GEO. S. GIDEON, printer, 511 Ninth street, Washington.

this court, and never by the supreme court of Missouri, except in this very case, as reported in 23 Mo., 532. And so, the supposition of adverse counsel, that this case is covered and controlled by the case of Guitard vs. Stoddard, (16 How., 507,) is a clear mistake. That case did not touch this question. In that case the question was not of locality—whether within or without the boundary—but a question of the time and manner of proving up the claim. The circuit court held that it could not be proven then, at the trial, but that the claimant ought to have made his proof before the recorder, under the act of May 26, 1824. And that was the point upon which this court reversed the judgment of the court below.

Survey of the private claim: As the claimant, to make himself a beneficiary of the act, must needs show himself within the scope of the general grant, which does not name him, nor specify his land, let us consider the necessity of a survey of his private claim.

It is said that the claimants, in these cases of confirmation by the act of 1812, stand in no need of a survey to perfect their title by identifying their lands. I answer, if that be so, it is not because the law does not require in that case, as in all others, special locality and exact boundary, but because there are other easy and convenient means of precise description.

The act grants only *lots*, not large tracts of land—lots in, adjoining, and belonging to towns, not lands in the wilderness—lots to which the persons had a right, title, or claim in Spanish times—lots which were actually inhabited, cultivated, or possessed as long ago as 1803—lots, therefore, capable of definite proof. And if no other law required that proof, the act of May 26, 1824, (4 Stat., 65, ch. 184,) makes it the duty of every claimant, who seeks to get the recorder's certificate of confirmation, to make proof "of the fact of inhabitation, cultivation, or possession, together with the boundaries and extent" of his claim—(not of his *right, title, or claim*, for that was supposed to be already in the recorder's office, as was the fact in very many cases, proved by the reports of the recorder, which were confirmed by the act of April 29, 1816, ch. 159.)

Besides the act of April 29, 1816, ch. 151, (3 Stat., 325,) after directing the survey of the *public* lands, proceeds to say: "And, also, *it shall be the duty of the surveyor* to cause to be surveyed the lands in the said Territories, the claims to which *have been*, or hereafter *may be*, confirmed *by any act of Congress*, which have not already been surveyed *according to law*.

From the general tenor of our land laws, it is manifest that the Government intended that all private claims should be surveyed; and this particular act enjoins upon the surveyor to survey *all lands* confirmed, or to be confirmed, *by any act of Congress*. But how can he perform that duty in regard to confirmations of claims which exist only in the secret memories of the claimants and their witnesses—claims which have no record or other written basis,

nothing in the public offices to which he can resort for information, and nothing upon the land itself to intimate a confirmation, or even a claim?

The possession of Hortiz of his little scrap—4.22 arpents—is only coeval with this action, (Sept. 15, 1853,) so far as appears in this record, and yet he claims a confirmation *then* more than forty years old!

The surveyor, as in duty bound, went on, under the said act of 1816, to survey the public lands and such private confirmations as were made known to him. But the claim of Bequette (or Hortiz) was not made known to him, neither by record evidence, nor even oral pretension. He could not, therefore, survey it, for he could not know of its existence. And hence, when, in 1818, (two years after the passage of the act,) he was surveying township 45, both public and private lands, he could do no otherwise than treat section 16 as public land, and survey it accordingly. And it *was* public land—so treated by both the nation and the State; and, therefore, if Bequette ever had any inchoate right to the land, he justly lost it by his laches.

As to the title of the plaintiff, derived under the act of 1811, I have nothing to add by way of argument; but desire only to make my reference to books more distinct than in the original brief, viz:

Act of Congress, March 3, 1811, ch. 46, 2 Stat., 665; 13 Pet. R., 498; (13 Curtis, 266;) Wilcox vs. McConnell's lessee, and especially 14 How., 268; (20 Curtis, 172;) Vincennes, &c. vs. Indiana.

As to the diversities in the records of these six cases—from 41 to 46, inclusive—there is no material difference; nothing to vary the legal merits of the cases. In fact, the only difference is that, in some of the cases, the defendants gave in evidence the proceedings of the recorder of land titles, under the act of May 26, 1824, in taking proofs, as required by that act, and the registry of his certificates of confirmation No. 42, argued by Mr. Hill for the defendant, is one of them, and I take it as a fair sample of the whole.

All that kind of testimony was objected to at the trials, and the objections saved of record. I believe the objections are all tenable, but I shall not argue them in detail, because they are all embraced within my general objection to the defendant's title—that is, that the first section of the act of 1812 does not confirm the title to any lot outside of the out-boundary of the town.

If my proposition be true, then it follows, of necessity, that all the proceedings before the recorder were *coram non judice*. He had no power to take the proofs, to issue the certificates, to make the registry, or to order the survey; and all his acts in that behalf were simply void. All the rights and duties of the claimants, and all the powers of the recorder in that regard, are granted by the act of May 26, 1824. The act relates only to that particular class of claims; and it requires the claimants, "whose lots were con-

§ 4. This act of 1812 extended to *Mine a Burton*, and the right of *filing their claims with the recorder*.

18. Act of January 27, 1831, ch. 12, 4 Stat., 435: Relinquishment of title to the town lots.

Reale

SUPREME COURT OF THE UNITED STATES.

No. ~~282~~. 120.43.

WILLIAM GLASGOW, JR., AND WILLIAM C. TAYLOR, SURVIVING COMMISSIONERS OF THE 16TH SECTION IN TOWNSHIP 45 NORTH, OF RANGE 7 EAST, PL'FFS IN ERROR,

vs.

ELZEAR BLANCHARD.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

G. S. GIDEON, Printer, 511 Ninth street, Washington.

281

SUPREME COURT OF THE UNITED STATES.

No. 282.

WILLIAM GLASGOW, JR., AND WILLIAM C. TAYLOR, SURVIVING COMMISSIONERS OF THE 16TH SECTION IN TOWNSHIP 45 NORTH, OF RANGE 7 EAST, PL'FFS IN ERROR,

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INDEX.

	Original.	Print.
Writ of error to Supreme Court U. States	1	1
Writ of error to St. Louis circuit court	2	2
Return on writ by clerk of circuit court	3	2
Petition in St. Louis land court	4	3
Summons and return thereon	5, 6	4
Alias summons and return	6	5
Answer of defendant	7	5
Agreement, continuance, and petition for change of venue	12	7
Continuance and cause set for trial	14	8
Motion for new trial made and overruled	15	9
Statement of facts	15	9
Appointment of commissioners by county court	16	10
Brown's field-notes, section 16	17	10
Agreement to use plats in Genl. Land Office	18	11
Admission by defendant	19	11
Act of Congress 13th June, 1812	19	11
Hunt's proceedings on Parent's claim	19	11
Riviere's testimony, and Dodier's testimony and translation	21	12

GIDEON, Print.

	Original.	Print.
Certificate of Recorder Land Titles and registry of certificate of confirmation	22	13
Copy of list from Surveyor General's office	23	14
Survey No. 1,661 and objections by plaintiffs	24	15
Plat and description of survey No. 1,661	25, 26	15
Interferences of survey No. 1,661 with others	28	17
Confirmation certificate No. 142 upon survey No. 1,661	30	18
Admissions by plaintiffs	31	19
Plaintiffs' instructions	32	19
Instructions by court on its own motion	33	20
Defendant's admission	33	20
Plaintiffs' admission	33	20
Defendant's instructions	34	20
Motion for new trial and agreement of parties	35	21
Suggestion of Milburn's death, and motion for rule	36	22
Rule on defendant	37	22
Return on rule by sheriff	38	23
Appearance by defendant	38	23
Assignment of errors in Sup. Court and joinder	38, 39	23
Case argued and submitted, and judgment in Sup. Court	39	23
Opinion of Sup. Court	39	24
Bond on writ of error to U. S. Sup. Court	40	24
Certificate of clerk of Supreme Court Missouri	41	25
Citation and service	42	25
Assignment of errors	44	26

[L. S.] UNITED STATES OF AMERICA, *ss.*

The President of the United States to the honorable the Judges of the Supreme Court of the State of Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, at March term, A. D. 1859, between William Glasgow, jr. and William C. Taylor, surviving commissioners of 16th section, in township 45 north, of range 7 east, plaintiffs, and Elzear Blanchard, defendant, a manifest error hath happened, to the great damage of the said plaintiffs, as by their complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, this 10th day of June, in the year of our Lord one thousand eight hundred and fifty-nine.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the district of Missouri, dated as aforesaid.

BEN. F. HICKMAN,
Clerk C. C. U. S. Missouri District.

Allowed by William Scott, presiding judge of the supreme court within and for the State of Missouri, this 23d June, 1859.

WILLIAM SCOTT.

THE STATE OF MISSOURI, *ss.*

I, William S. Glanville, clerk of the supreme court within and for the State of Missouri, held at St Louis, in obedience to the command of the within writ, do herewith transmit to the Supreme Court of the United States a full, true, and complete transcript of the record and proceedings in the case of William Glasgow, junior, and William C. Taylor, surviving commissioners of the sixteenth sec-

tion, township 45, range 7 east, plaintiffs, and Elzear Blanchard, defendant, as fully as the same remain of record and on file in my office.

In testimony whereof, I hereto set my hand and the seal [L. S.] of said court, at office in St. Louis, this 30th day of August, A. D. 1859.

WM. S. GLANVILLE, *Clerk.*

THE STATE OF MISSOURI, *ss.*

On the 19th day of February, 1858, there issued from the office of the clerk of the supreme court within and for the State of Missouri, held at St. Louis, a writ of error, which is in words and figures following, to wit:

Writ of Error.

THE STATE OF MISSOURI, *ss.*

The State of Missouri to the honorable the St. Louis Circuit Court in said State, greeting:

Whereas in the record and proceedings in a certain cause lately pending in the said court, wherein William Milburn, William Glasgow, jr., and William C. Taylor, commissioners of the 16th section, in township 45, are plaintiffs, and Elzear Blanchard, defendant, in a suit to recover land, manifest error hath intervened, to the great damage of said plaintiffs, as by their complaint we are informed:

Now, being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, command you, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said court, so that we may have them before us at our supreme court, to be begun and held in the city of St. Louis, in the county of St. Louis, in said State, on the third Monday in March next, so that our judges of our supreme court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right, and according to law, ought to be done.

Witness William S. Glanville, clerk of our said supreme [SEAL.] court, in the city of St. Louis, the 19th day of February, in the year of our Lord one thousand eight hundred and fifty-eight.

WM. S. GLANVILLE, *Clerk.*

Return on Writ of Error.

Afterwards, on the 26th of February, 1858, said writ of error was returned to and filed in the office of the clerk of the supreme court with the following endorsement:

STATE OF MISSOURI,
County of St. Louis, ss.

In obedience to the within named writ, I herewith transmit a true and complete transcript of the record and proceedings in the within named cause.

In testimony whereof, I hereto set my [hand] and affix the seal of said court, at office in the city of St. Louis, this 25th day of February, 1858.

STEPHEN RICE, *Clerk.*

Transcript from Circuit Court.

Said transcript is in words and figures as follows:

STATE OF MISSOURI,
County of St. Louis, ss.

Be it remembered. that at the April term, 1855, on the 25th day of May, of the circuit court within and for the county aforesaid, a transcript was filed, which is in the words and figures following, to wit:

STATE OF MISSOURI,
County of St. Louis, ss.

Be it remembered, that heretofore, to wit, on the fifteenth day of September, 1853, there was filed in the office of the clerk of the St. Louis land court in and for said county, a petition, which is in the words and figures following, to wit:

Petition.

WILLIAM MILBURN, WILLIAM GLASGOW, JR. and WILLIAM C. TAYLOR, commissioners of the sixteenth section of township forty-five north, range seven east, Plaintiffs, against ELZEAR BLANCHARD, Defendant.	S. Louis Land Court, St. Louis county.

The plaintiffs state, that on the 11th day of April, A. D. 1851, they were duly appointed commissioners as aforesaid by the St. Louis county court, pursuant to the provisions of an act entitled "An act to authorize the sale of fractional section sixteen, township forty-five north, range seven east," approved 3d March, 1851. That, as such commissioners, the plaintiffs were on the first day of January, A. D. 1853, lawfully entitled to the possession of that tract of land situate in St. Louis county, known and described as

the sixteenth section of township forty-five north, in range seven east, according to the surveys of the public lands office of the United States; that afterwards, on the 2d day of January, 1853, the defendant entered into said tract of land and has enclosed with fence about twenty acres, parcel of said sixteenth section, and has ejected and put out the plaintiffs from such parcel, and still unlawfully withholds the possession of such parcel from the plaintiffs, to their damage one hundred dollars.

The plaintiffs pray for judgment for the possession of said parcel of land, and for their damages aforesaid, &c. By their attorneys,

FIELD, WILLIAMS, & BATES, *Att's.*

Barton Bates, attorney for plaintiffs, makes oath that the foregoing petition and the matters as stated he believes to be true.

BARTON BATES.

Signed and sworn to, this 15th September, 1853.

CH'S A. MANTZ, *Clerk.*

Summons.

STATE OF MISSOURI.

To the Sheriff of St. Louis County, greeting:

We command you to summon Elzear Blanchard to appear before the judge of our St. Louis land court on the first day of the next term thereof, to be held at the city of St. Louis, within and for the county of St. Louis, on the first Monday of October next, then and there to answer the complaint of William Milburn, William Glasgow, jr., and William C. Taylor, commissioners of the sixteenth section of township forty-five north, range seven east, as set forth in the annexed petition, and have you then and there this writ.

Witness Charles A. Mantz, clerk of our said court, with
[SEAL.] the seal thereof hereto affixed, at office in the city of St. Louis, this 15th day of September, A. D. 1853.

CHARLES A. MANTZ, *Clerk.*

Upon which writ the sheriff made the following return:

Sheriff's Return on Summons.

The within named defendant, Elzear Blanchard, not found in my county. September 29th, 1853.

JOHN M. WIMER, *Sheriff.*

By H. S. CHADBOURNE, *Deputy.*

And afterwards, the following proceedings were had, to wit:

Saturday, October 15th, 1853.

On motion of plaintiffs' attorneys, it is ordered that an alias summons be issued in this cause. Thereupon the cause was continued until the next term, and an alias summons issued, which is as follows:

Alias Writ of Summons.

The State of Missouri to the Sheriff of St. Louis County, greeting:

We command you again to summons Elzear Blanchard to appear before the judge of our St. Louis land court on the first day of the next term thereof, to be held at the city of St. Louis, within and for the county of St. Louis, on the first Monday of March next, then and there to answer the complaint of William Milburn, William Glasgow, jr., and William C. Taylor, commissioners of the sixteenth section, of township forty-five north, range 7 east, as set forth in the annexed petition, and have you then and there this writ.

Witness Charles A. Mantz, clerk of our said court, with the seal thereof hereto affixed, at office, this sixteenth day [SEAL.] of November, in the year of our Lord eighteen hundred and fifty-three.

CHARLES A. MANTZ, *Clerk.*

Sheriff's Return.

Upon which the sheriff made the following return:

Executed this writ in the county of St. Louis this first day of December, 1853, by delivering to Elzear Blanchard, the within defendant, a copy of the writ and petition as furnished by the clerk.

JOHN M. WIMER, *Sheriff.*
By J. C. BLAKEY, *Deputy.*

Defendant's Answer.

And afterwards the following further proceedings were had, to wit:

Monday, March 13th, 1854.—Answer filed.

Defendant, for answer, says, that he has no knowledge or information sufficient to form a belief as to whether said plaintiffs, on the 11th day of April, 1851, were duly appointed commissioners as aforesaid, or in any other manner howsoever, by the St. Louis county court, pursuant to the provisions of an act entitled "An act to authorize the sale of fractional section sixteen, township forty-five north, range seven east," approved March 3d, 1851, nor whether said plaintiffs, on the 1st day of January, 1853, were

lawfully entitled to the possession of any of that tract of land situate in St. Louis county, known and described as the sixteenth section, township forty-five north, in range seven east, according to the surveys of the public lands of the United States. Defendant denies that said plaintiffs, as such commissioners as aforesaid, or in any other manner howsoever, were on the first day of January, 1853, entitled to the possession of any land whatsoever, at any time in the possession of this defendant. He also denies that he unlawfully withheld at the commencement of this suit, or at any other time, the possession of about twenty acres parcel of said sixteenth section, or any land whatsoever, from said plaintiffs, to their damage $100, or any other sum whatsoever, or that he ever ejected or put out the plaintiffs from such parcel on the 2d day of January, 1853, or any other time. Defendant further says that, by the act of the Congress of the United States of America, approved the 13th day of June, 1812, entitled "An act making further provision for settling the claims to land in the Territory of Missouri," there was confirmed to the legal representatives of Francis Faustin dit Parent a common-field lot, belonging to the town of St. Louis, lying in the Big or Grand Prairie, and being one of the common-field lots of Grand Prairie, and being one arpent in front by forty in depth, and bounded north by the field-lot formerly claimed by Auguste Candé, or his legal representatives; east by vacant land; south by the field-lot formerly claimed either by Louis Laroche, or his legal representatives, or by Benito Vasquez, or his legal representatives; and west by vacant land; which said common-field lot was cultivated and possessed by said Faustin dit Parent, those under whom he claimed prior to the 20th day of December, A. D. 1803.

And subsequently, and on or about the 29th day of July, A. D. 1825, in pursuance of an act of said Congress, approved the 26th day of May, 1824, entitled "An act supplementary to an act passed on the 13th day of June, A. D. 1812, entitled An act making further provision for settling the claims to land in the Territory of Missouri," the owners and claimants of said common-field lot, being one of the common-fields of said Grand Prairie, proceeded to designate their said lot by proving before Theodore Hunt, the recorder of land titles for said Territory of Missouri, cultivation and possession of such lot by such owners and claimants, and those under whom they claimed, prior to said 20th day of December, A. D. 1803, and the boundaries and extent thereof.

Defendant also says, that the legal representatives of said Francis Faustin dit Parent have had actual, peaceable and adverse possession of a part of said tract of land—that is to say, the aforesaid common-field lot, claiming title to the whole, and therefore the legal possession of the whole thereof, uninterruptedly for more than twenty years next before the commencement of this suit,

claiming to be the owners thereof, under paramount title thereto, as aforesaid. He also says, that he is one of the legal representatives of said Francis Faustin dit Parent, and as such is the owner, by a good and defeasible title to one undivided fourth part of said common-field lot, an estate for the life of his wife Rosalie, formerly Rosalie Vasquez, in one undivided sixth part thereof, and also an estate for the life of Rosalie, widow of Paschal Faustin, formerly Rosalie Lecompte, in one undivided third of an undivided half—that is to say, an undivided sixth of said common-field lot.

T. POLK,
Att'y for Defendant.

Said defendant files herewith the following originals and copies, and documents, deed and instruments of title.

Continuance.

And afterwards, on the 24th March, 1854, this cause was continued until the next term by consent of parties.

Agreement and Continuance.

And afterwards, at the October term following, on the 6th of October, 1854, the following agreement of counsel was filed in this cause, to wit:

That this cause shall be continued at the cost of the defendant, which continuance is to be opened at the desire of either party for change of venue if the court will permit, which agreement is in words and figures as follows: [Same as just copied.]

(Signed) P. POLK, *P. Q.*
BARTON BATES, with WILLIAMS,
For Plaintiffs.

Petition for change of Venue.

And afterwards, on Saturday, the 14th day of October, 1854, the defendant petitioned for a change of venue, which is in words and figures as follows:

Now, at this day, comes said defendant, by his attorneys, and presents his petition for a change of venue of this cause; notice of the presentation thereof being waived by the plaintiffs' attorneys, and the said petition containing the allegations that the judge of this court is prejudiced against the said defendant, and in favor of said plaintiffs in this cause, and that he has just cause to believe that he cannot have a fair trial on account of the cause above alleged; and said allegations being verified by affidavit of said defendant, it is therefore ordered that the clerk of this court make out a full copy of the record and proceedings in this cause according to law, and certify the same to the circuit court of St. Louis county, which petition is in the words and figures following, to wit:

To the Honorable the St. Louis Land Court:

The petition of said Elzear Blanchard respectfully represents, that the judge of this court aforesaid is prejudiced against the said defendant, your petitioner, and in favor of said plaintiffs in this cause, and states that the petitioner has just cause to believe that he cannot have a fair trial on account of the cause above alleged. He therefore prays for a change of venue in this cause to the St. Louis circuit court; and, as in duty bound, he will ever pray, &c.

ELZEAR BLANCHARD.

Elzear Blanchard, the above named defendant and petitioner, makes oath and says, that he verily believes that the foregoing petition, and the matters and things therein contained, are true, and he also saith that he hath just cause to believe that he cannot have a fair trial on account of the causes alleged in said petition.

ELZEAR BLANCHARD.

Sworn and subscribed before me, this 13th day of October, 1854.

WM. G. BLACKWOOD,
Notary Public.

STATE OF MISSOURI,
County of St. Louis, ss.

I, Charles A. Mantz, clerk of the St. Louis land court in and for said county, certify the foregoing to be a full transcript of the record and proceedings in the cause wherein William Milburn, William Glasgow, jr., and William C. Taylor, commissioners of the sixteenth section, township forty-five north, range seven east,

In witness whereof, I hereto set my hand and affix the seal of said court at office, in the city of St. Louis, this 21st day of November, 1854.

[SEAL.]

CHALES A. MANTZ, *Clerk.*

Continuance.

And afterwards the following proceedings were had in the St. Louis circuit court, at the March term, 1856, on Wednesday, the seventh of May, to wit:

This cause is continued until the next term.

Continuance and time set for Trial.

And afterwards the following proceedings were had, to wit, at the March term, 1857:

This cause is continued, and on motion of the parties herein, it is ordered by the court that this cause be set for the second Monday of the next term of this court.

And afterwards, to wit, on Saturday, the 17th October, 1857, the following proceedings were had in this cause, to wit:

Now, at this day, come again the said parties, by their respective attorneys, and thereupon come also a jury, to wit: N. Barnum, Henry Beschoff, Michael Cook, Fred. Meyer, Peter Meyer, William Nalley, G. Hennan, Sand. G. Bull, Charles M. O'Hara, Ladden Davis, and George W. Fisher, twelve good and lawful men, who being duly elected, tried, and sworn, the matters in controversy well and truly to try, the trial of this cause progressed; and being finished, the jurors aforesaid, upon their oaths aforesaid, find the issue herein joined in favor of said defendant. It is therefore considered by the court that said plaintiffs recover nothing by their said suit in this behalf, but that said defendant go hence without day, and recover of said plaintiffs his costs and charges herein expended, and have execution therefor.

Motion for New Trial.

And afterwards, during said term, to wit, on the 19th October, 1857, the plaintiffs filed a motion for a new trial. And on the 30th of November following, the following proceedings were had in said cause:

Motion for New Trial Overruled.

The court having duly heard and considered the motion of said plaintiffs for a new trial of this cause, and being thereof fully advised, doth order that said motion be overruled.

Bill of Exceptions.

Thereupon the plaintiffs filed their bill of exceptions, which is as follows:

This cause was tried by a jury on the 17th day of October, 1857. On the trial the plaintiffs, to maintain the issue on their part, gave in evidence the act of Congress approved March 6th, 1820, entitled "An act to authorize the people of the Missouri Territory to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States, and to prohibit slavery in certain territories;" also an ordinance of the people of Missouri passed in convention on the 19th day of July, 1820, entitled "An ordinance declaring the assent of the people of the State of Missouri, by their representatives in convention assembled, to certain conditions and provisions in the act of Congress of the 6th of March, 1820, entitled An act to authorize the people of Missouri Territory to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States, and to prohibit slavery in certain territories." And also an act of the general assembly of the State of Missouri, approved March 3d, 1851, entitled "An

act to authorize the sale of fractional section sixteen, township forty-five north, range seven east."

Record of County Court.

The plaintiffs then read in evidence the record of the St. Louis county court, appointing the plaintiffs commissioners under the last mentioned act, as follows:

In St. Louis County Court, April 11, 1851.

The court appoint William Milburn, William Glasgow, jr., and William C. Taylor, commissioners to take possession of section number sixteen, township forty-five north, range seven east, and to sell the same, or any part thereof, on such terms and in such manner as the court shall direct hereafter; the said commissioners having all the powers and subject to all the restrictions of the act of the general assembly of the State of Missouri, entitled "An act to authorize the sale of fractional section sixteen, township forty-five north, range seven east," approved March 3d, 1851.

STATE OF MISSOURI,
County of St. Louis, ss.

I, Josiah Thornburgh, clerk of the county court within and for the county aforesaid, hereby certify that the foregoing is a true copy from the record of said court, in my office.

In testimony whereof, I hereto set my hand and the seal of said court at office, in the city of St. Louis, this 29th day of September, A. D. 1857.

[SEAL.]

JOSIAH THORNBURGH, *Clerk.*

Brown's Field-notes.

The plaintiffs then read in evidence the field-notes of Brown's survey of fractional section sixteen, made in 1818, as follows:

Field-notes of Section 16, Township 45 North, Range 7 East.

From a point in widow Camp's N. boundary 15.75, westerly of Pettier's west line, where set a post, from which a b. o., 3 in. diam., bears N. 39° W., 58 l.; and a do., 3 in. diam., bears S. 19° W., 100 l.; north between secs. 15 and 16, T. 45 N., range 7 east; 9.53, set ¼ sec. post, from which a w. o., 3 in. diam., bears N. 2 E., 25 l.; and a do., 3 in diam., bears N. 89 E., 21 l.; 29.53, the west edge of a pond, 2 chs. wide; 49.50, set post corner to secs. 9, 10, 15 and 16, in a mound west, between secs. 9, 16, T. 45 N., R. 7 east; 40.00, set ¼ sec. post in a hazel thicket; 80.00, set post corner to secs. 8, 9, 16 and 17, in a hazel thicket mound; land lies well, good soil, und. gr'th hazel and bushes, south, between secs. 16 and 17, T. 45 N., R. 7 east; 40.00, set ¼ sec. post in mound; 42.00, a branch 5 l. bears southerly; 44.00, left branch, bearing S. E.; 51.00, a spring branch bears S. E.; 57.69, intersected E.

Yoste's 80 arpent tract, 7 chs. west of his N. E. corner, on Chouteau; set stone. Land, gently rolling prairie.

OFFICE OF SURVEYOR GENERAL OF ILLINOIS AND MISSOURI,
St. Louis, October 9, 1857.

The above is a correct copy from book 23, and pages 180 to 183, of the field-notes of Missouri surveys on file in this office, of the original field-notes of the lines between sections 15 and 16, and 9 and 16, and 16 and 17, of township 45 north, range 7 east of the 5th principal meridian, as said lines were surveyed in 1818 by Jno. C. Brown, under contract of 31st March, 1817.

JNO. LOUGHBOROUGH,
Surveyor General.

The plaintiffs then exhibited in evidence an authenticated plat of township 45 north, range 7 east, certified by the surveyor general of Ills. and Mo., the 17 of June, 1845, to be a true copy and authenticated plat and description of the survey of the out-boundary of the town of St. Louis, as established by the surveyor general.

Agreement to use Plats on file in Gen'l Land Office.

It was agreed between the parties, that authenticated copies of the foregoing township and out-boundary plats, from the office of the surveyor general at the General Land Office, at Washington, may be used before any appellate court to which the case may be carried, with like effect as if the same were set forth in this bill of exceptions at large.

Admission by Defendant.—Close of Pl'ffs' Case.

The defendant admitted that the land in controversy lay without the exterior limits of said out-boundary survey. The defendant further admitted that at the commencement of this suit he was in possession of a part of said fractional sixteenth section, as stated in his answer. The plaintiffs then rested.

Defendant's Case.—Acts of Congress.

The defendant, to maintain the issue on his part, read in evidence the act of Congress entitled "An act making further provision for settling claims to land in the Territory of Missouri," approved the 13th of June, 1812; and also the act of Congress, entitled "An act supplementary to an act passed on the 13th day of June, 1812, entitled 'An act making further provision for settling the claims to land in the Territory of Missouri,'" approved May 26th, 1824.

Hunt's Proceedings on Parent's Claim.

The defendant then offered in evidence the proceedings of Re-

corder Hunt, under said act of May 26th, 1824, in respect to the claim of Faustin dit Parent's representatives.

The plaintiffs objected to the reception of said evidence, and insisted that the same was incompetent:

1. Because, in so far as said proceedings can in any wise affect the land now in controversy, the same were had and the proofs therein taken, without any notice to the State of Missouri, to the inhabitants of township 45 or to the plaintiffs.

2. Because said proceedings, so far as they affect the land in dispute here, [are] repugnant to the Constitution of the United States and of this State, and in derogation of the sovereignty of this latter.

The court decided that the proffered evidence was competent and legal, and permitted the same to be read to the jury. To such action of the court the plaintiffs duly excepted. The said proceedings and proofs were then read to the jury, as follows:

Testimony relating to town and village lots, and common-field lots, in, adjoining, or belonging to the several towns or villages of Portage des Sioux, St. Charles, St. Louis, St. Ferdinand, Villa a Robert, Carondelet, Ste. Genevieve, New Madrid, New Bourbon, Little Prairie, and Mine a Breton, in Missouri, and the village of Arkansas, in the Territory of Arkansas, as directed by an act of Congress passed May 26th, 1824.

THEODORE HUNT,
Recorder of Land Titles.

See Hunt's minutes, book No. 1, page 1.

Francis Fastin's (dit Parent) legal representatives claim a common-field lot on the Grand Prairie near St. Louis, containing two arpens in front, by forty in depth, bounded on the north by the field-lot claimed by Auguste Candé's legal representatives, east by vacant land, south by the field-lot formerly owned by Louis Laroche, and west by vacant land.

Riviere's Testimony.

Baptiste Riviere, being duly sworn, says he knows the field-lot claimed, and that fifty years ago this lot was owned and cultivated by Francis Fastin dit Parent, who cultivated the same until his death, and after his death his field-lot was cultivated by two men named Chartran and Fastin, nephews of Fastin, and was a single man, and to the knowledge of this deponent, one of these nephews of Fastin dit Parent cultivated this same common-field lot until the fence was taken down.

his
BAPTISTE ⋈ RIVIERE.
mark.

Sworn to before me, July 29th, 1825.

THEODORE HUNT.

Dodier's Testimony.

Rene Dodier, being duly sworn, says he knows the field-lot claimed, and that forty years ago this field-lot was owned and cultivated by Jacques Fastin and Chartron, but after the death of the said Chartron this lot was owned and cultivated by Jacques Fastin, who continued to cultivate the same until the fence was taken down.

his
RENE ⋈ DODIER.
mark.

Sworn to before me July 29th, 1825.

THEODORE HUNT,
Recorder Land Titles.

Paul's translation.

Rene Paul, being duly sworn, says he has truly translated and read to Baptiste Riviere and Rene Dodier each of their above depositions before their signing the same, and that they said they were true. This deponent further says that he has been on the field-lot above described in company with these witnesses this day, and that it shows evident marks of former cultivation.

RENE PAUL.

Sworn before me, July 29th, 1825.

THEODORE HUNT,
Recorder of Land Titles.

See Hunt's minutes, No. 2, p. 107.

Certificate of Recorder of Land Titles.

OFFICE OF RECORDER OF LAND TITLES,
St. Louis, 7 *June*, 1850.

I certify that the foregoing is correctly transcribed from page 1 of book No. 1, and page 107 of book No. 2, in this office, of the testimony taken by Theodore Hunt, recorder of land titles in the State of Missouri, pursuant to the first section of the act of Congress, approved on the 26 May, 1824, entitled "An act supplementary to an act passed the 13th day of June, 1812, entitled An act making further provision for settling the claims to land in the Territory of Missouri."

ADOLPHE RENARD,
U. S. Recorder Land Titles in State of Missouri.

Registry of Certificates of Confirmation on town lots, out and common-field lots, issued by the Recorder of Land Titles.

In whose name issued.	Date.	Situation.	Remarks.	Quantity arpens.
Fr's Faustin dit Parent's legal representatives.	1855. July 29.	Grand Prairie Common field near St. Louis.	Bound north by the field-lot of Conde, south by the field-lot of Laroche, east and west by vacant land.	One front, forty deep.

OFFICE OF THE RECORDER OF LAND TITLES,
St. Louis, 11*th March*, 1854.

I certify that the above is correctly extracted from the original list on file in this office, which was prescribed by the 3d section of the act of Congress of the 26 May, 1824, entitled "An act making further provision for settling the claims to land in the Territory of Missouri."

ADOLPHE RENARD,
Recorder of Land Titles in the State of Missouri.

Copy of List from Surveyor General's Office.

Defendant then offered in evidence the authenticated copy of list from surveyor general's office, of the confirmation furnished that office by the recorder of land titles, which is as follows:

(601.)—No. 592.

Francis Faustin dit Parent's legal representatives.	1825. July 29th.	Grand Prairie common-field, St. Louis.	Bounded north by the field-lot of Conde's representatives, east and west by vacant land, and south by the claim of Louis La Roche.	One front forty arpens.

RECORDER'S OFFICE,
St. Louis, October, 15*th* 1827.

I, Theodore Hunt, recorder of land titles in the State of Missouri, do certify the foregoing record contained in 47 pages, commencing with Louis Lemond, and ending with the field-lot of Titus Strickland, contains all the village lots, out-lots and common-field lots, the boundaries of which have been proven before me, under the provisions of an act of Congress, approved the 26th May, 1824, entitled "An act supplementary to an act passed on the 13th day of June, 1812, entitled An act making further provision for settling the claims to land in the Territory of Missouri."

THEODORE HUNT.

OFFICE OF THE SURVEYOR GENERAL
FOR ILLINOIS AND MISSOURI,
St. Louis, 18 *May*, 1857.

I certify that the above data in relation to the claim of François Faustin dit Parent's legal representatives in the Grand Prairie common-field of St. Louis, and the annexed certificate of the recorder of land titles, are correctly copied, the former from page 27 and the latter from pages 48 and 49 of a list in this office, which was returned to the surveyor general by the said recorder in pursuance of the 3d section of the act of Congress of the 26 May, 1824, referred to in the above mentioned certificate.

JNO. LOUGHBOROUGH,
Surveyor General.

Survey No. 1,661, *offered by Defendant.*

The defendant then tendered in evidence a paper purporting to be a survey, duly certified by the surveyor general, of the lot of Faustin dit Parent's representatives, as proved before Recorder Hunt, in a proceeding just before set forth, and being the United survey No. 1,661.

Objections by Plaintiffs.

The plaintiffs objected to the reception of such paper, because—

1. The survey, in manner and form as the same appeared to have been made, was not authorized by law.

2. Said survey embraced the land in controversy which the United States had absolutely sold and granted to the State of Missouri more than thirty years before the date of such survey. The court decided that such paper was good and competent evidence, and permitted the same to be read to the jury. To such action of the court the plaintiffs duly excepted. The said paper was then read as follows:

Plat and Description of Survey No. 1,661.

Survey No. 1,661.

Plat and description of the survey of a tract of land of 34.10 acres situate in the Grande Prairie common-field of St. Louis, in township 45 north of the base line, range seven east of the fifth parallel meridian, in the State of Missouri, executed in the years 1850 and 1855 by William H. Cozens, deputy surveyor, under instructions from the surveyor general for Illinois and Missouri, dated the 9th day of May, 1846, and the 22d of February, 1855, this being the tract of one by forty arpens claimed by Francis Faustin dit Parent's legal representatives, confirmed by the act of Congress of the 13th of June, 1812, entitled "An act making further provision for settling the claims to land in the Territory of Missouri." The extent and boundaries whereof were proven on the 29th of

July, 1825, before Theodore Hunt, United States recorder of land titles in the State of Missouri, in conformity with the provisions of the act of Congress of the 26 May, 1824, entitled "An act supplementary to an act passed on the 13th day of June, 1812, entitled An act making further provisions for settling the claims to land in the Territory of Missouri." See Recorder Hunt's minutes, book No. 2, page 107, in the office of the recorder of land titles. See also on Hunt's list, No. 601, in the office of surveyor general.

Township 45 N., R. 7 east of the 5th Pl. Meridian.

[*For plat see original, page* 26.]

Description of Survey.

Beginning at a stone 14 inches long, 8 inches wide, 4 inches thick, the southeast corner of survey numbered 1,660, in the name of Auguste Condé's legal representatives, and the northeast corner of this survey; thence north 61° west with the southern boundary of the Auguste Condé survey, at 50 chains and 86 links a stone thirteen inches long, seven inches wide, and three and a half inches thick, at the intersection with the south boundary of section 16, which is also a line of survey nnmbered 2,499 in the name of Martin Coontz or legal representatives; at 68 chains and 96 links a stone 12 inches long, 9 inches wide, and three and a half inches thick, at the intersection of the line between the Martin Coontz survey and survey numbered 2,712, in the name of James Conway or legal representatives; at seventy-seven chains and sixty-four links, a point 68 links southward of the Condé spring; at 78 chains and seven links, cross a spring branch; at 78 chains 69 links a branch five links wide runs southward; at 90 chains and 89 links a stone 9½ inches long, 9½ inches wide, and three inches thick at the intersection of with the line between James Conway's survey and survey No. 2,692, in the name of Joseph Genereux or his legal representatives; at *at* 116 chains and 97 links a stone 15 inches long, 6½ inches wide, and 3 inches thick, the southwest corner of Auguste Condé's survey and the northwest corner of this survey; thence south 28° 45′ west, 2 chains and 91⅔ links to a stone 14½ inches long, 7½ inches wide, and 5½ inches thick, the northwest corner of survey numbered 1,662, in the name of the representatives of Benito Vasquez, and the southwest corner of this survey; thence south 61° east, with the northern boundary of the Benito Vasquez survey, at 1 chain and 88 links, a point in the middle of the Olive street plank-road; at 20 chains and 83⅔ links a stone 13 inches long, 6½ inches wide, four inches thick, at the intersection with the line between Joseph Genereux and the James Conway surveys; at 38 chains and 92⅔ links, cross a branch; at 44 chains and 7⅔ links cross another branch; at 49 chains and 60⅔ links a stone, at the in-

tersection with the line between the James Conway and the Martin Coontz surveys; at 60 chains and 89⅔ links a stone, at the intersection with the north boundary of section 16, which is also a line of the Martin Coontz survey; at 75 chains and 36⅔ links cross a branch; at 110 chains and 82⅔ links the west edge of Grand Avenue; at 112 chains and 4⅔ links the east edge of Grand Avenue; and at 116 chains and 88⅔ links a stone 15 inches long, 6½ inches wide, four inches thick, the northeast corner of the Benito Vasquez survey and the southeast corner of this survey; thence north 28° 45′ east, 2 chains and 91⅔ links, to the beginning corner.

Interferences.

A statement of the interferences of survey No. 1,661, with other surveys previously made.

The following surveys are founded upon certificates issued by Frederick Bates, United States recorder of land titles in the Territory of Missouri, under provision of the act of Congress of the 17th of February, 1815, entitled "An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who suffered by earthquakes."

Survey No. 2,692.

1. Survey No. 2,692, certificate No. 19, issued to Joseph Genereux, or legal representatives, for 160 acres, on the 12th of November, 1815, located by Joshua Barton on the 12th of December, 1817, surveyed by Joseph C. Brown on the 23d June, 1819. Patent certificate, No. 318, issued by the recorder of land titles on the 4th of February, 1823; area of the interfering part = 6.85 acres.

2. Survey No. 2,712, certificate No. 348, issued to James Conway, or legal representatives, for 200 arpens, on the 20th of November, 1817, located on the 16th of June, 1818, by Taylor Berry and Matthias McGirk, surveyed by Joseph C. Brown on the 23d of June, 1819. Patent certificate, No. 322, issued by the recorder of land titles on the 20 May, 1823; area of the interfering part = 7.38 acres.

3. Survey No. 2,499, certificate No. 145, issued to Martin Coontz, or legal representatives, for 640 acres, on the 18 September, 1816, located by John McKnight and Thomas Brady on the 29 May, 1818, survey by Joseph C. Brown in July, 1818. Patent certificate, No. 309, issued by the recorder of land titles on the 17th of November, 1822; area of the interfering part = 4.29 acres.

4. Section 16 reserved for the schools, surveyed in the year 1818 by Joseph C. Brown; area of the interfering part = 15.58 acres.

OFFICE OF SURVEYOR GENERAL ILLINOIS AND MISSOURI,
St. Louis, March 21st, 1857.

The foregoing plat and description of survey numbered 1,661 are this day approved, as recorded on the pages 292 and 294 of this book, (book F.)

JNO. LOUGHBOROUGH,
Surveyor General.

Confirmation Certificate No. 142, *upon Survey No.* 1,661.

Defendant then gave in evidence the following confirmation certificate, accompanied by a survey, which was a copy of the aforesaid United States survey No. 1,661, to wit:

OFFICE OF RECORDER OF LAND TITLES,
St. Louis, 24 *August*, 1857.

Confirmation Certificate No. 142. (Stats. at Large, vol. 2, p. 748; vol. A, pp. 65, 435.)

It is hereby certified, that under the first section of the act of Congress, approved on the 13th of June, 1812, entitled "An act making further provision for settling the claims to land in the Territory of Missouri," and the two acts of Congress of the 26 May, 1824, and 27 January, 1831, supplementary or having reference thereto, Francis Faustin dit Parent's legal representatives were confirmed in their claims to a tract of land of one by forty arpens, situated in the Grand Prairie common-field of St. Louis.

It is further certified that the same has been lawfully surveyed, in conformity with said confirmation in said common-field, being in township 45 north of the base line, range seven east of the fifth principal meridian, in the State of Missouri, as appears from the accompanying plat and transcript of survey No. 1,661, authenticated and returned on the 3d of August, 1857, to this office, by John Loughborough, surveyor general for the district of Illinois and Missouri, to wit: Beginning at A on the plat, the northeast corner of the suruey, and running thence north 61° west, 116 chains and 97 links, with the northern line of the survey, to its northwest corner; thence south 28° 45′ west, with the western line of the survey, two chains and $91\frac{2}{3}$ links to its southwest corner; thence south 61° east, with the southern line of the survey, 116 chains $88\frac{2}{3}$ links to its southeast corner; and thence 28° 45 minutes east, with the eastern line of the survey, two chains and $91\frac{2}{3}$ links to the beginning corner—all in English measure. Said survey, No. 1,661, contains $38\frac{10}{100}$ acres.

It is further certified that the whole area of said survey is interfered with by surveys previously executed, viz: to the amount of 15.58 acres in section 16, reserved for the schools, and in the furthering surveys of locations under the act of Congess of the 17

February, 1815, entitled "An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who suffered by earthquakes," to wit: to the amount of 6.85 acres in survey No. 2,692, under No. 19, issued to Joseph Gerneux, or his legal representatives, for 160 acres, of 7.38 acres in survey No. 2,712, under certificate No. 348, issued to James Conway or legal representatives, for 200 arpens, and of 4.22 acres in survey No. 2,499, under certificate No. 145, issued to Martin Coontz or legal representatives, for 640 acres.

In testimony whereof, I have hereunto set my hand, on the day and in the year above written.

ADOLPHE RENARD,
Recorder Land Titles in the State Missouri.

Recorded at pages 139 and 140 of book of Confirmation Certificates.

Admissions by Plantiffs.

The plaintiffs admitted, for the purposes of the present trial, that all the titles of Faustin dit Parent, or his legal representatives, in the land in dispute, had become vested in the defendant, and that the said claim, as separately surveyed, covered the same.

Plaintiffs' Instructions.

No further evidence was given on either side. The plaintiffs requested the court to give to the jury the following instructions, and each of them:

1. The jury are instructed that the several matters of proofs adduced by the plaintiffs, if genuine, are effectual to show that the title to the land in dispute was vested in the State of Missouri on the 19th day of July, 1820, and that the same title has become vested in the plaintiffs. (Refused.)

2. The jury are further instructed, that the proceedings and proofs before Recorder Hunt, under the act of Congress of 26th May, 1824, read in evidence by the defendant, have no force or effect as against the title of the State of Missouri, acquired in the year 1820. (Refused.)

3d. The jury are further instructed, that the survey of the out-boundary read in evidence is to be considered by them as the official authoritative survey of the out-boundary directed to be run by the act of Congress of the 13 June, 1812, binding on all parties claiming a confirmation by force of the 1st section of said act; and that all the evidence adduced by the defendant to show that the lot of Faustin dit Parent was situated on the land in controversy, outside of the out-boundary as marked by such survey, ought to be disregarded by the jury. (Refused.)

The court refused to give said instructions, or either of them. To such refusal the plaintiffs duly excepted.

Court's Instructions on its own motion.

The court on its own motion gave the following instructions:

By virtue of act of Congress of March 6th, 1820, and the ordinance declaring the assent of the people of the State of Missouri thereto, dated 19th July, 1820, whatever title the United States may have had in the land described in plaintiffs' petition at the time of the passage of that act, if it be the sixteenth section or a fractional part thereof, passed to and vested in the State of Missouri for the use of schools, and by the act of the legislature of this State, approved March 3d, 1851, and the order of the county court read in evidence, if you find that order genuine, the plaintiffs have the right to sue for said land; and if you find that the defendant at the commencement of this suit was in possession of any portion of said land, you should [find] for the plaintiffs, unless you believe defendant has shown a better title as hereinafter mentioned.

Defendant's Admission.

So far as this case is concerned, the defendant admits that at the commencement of this suit he was in possession of a portion of the premises described in the petition.

Plaintiffs' Admission.

And the plaintiffs admit that whatever title to the land in the possession of the defendant may have been at any time vested in Faustin dit Parent, was at the commencement of this suit, and now is, vested in the defendant.

Defendant's Instructions.

The court then, on motion of defendant, gave the following instructions:

1. If the jury find from the evidence that a tract of land, of which the premises in possession of the defendant at the commencement of this suit are a part, was cultivated by Francis Faustin dit Parent prior to the 20th day of December, 1803; that said Francis Faustin dit Parent was at the time of such cultivation an inhabitant of the town of St. Louis; that said tract of land was situated in the Grand Prairie in the neighborhood of said town, and was used by said Faustin dit Parent for the purposes of cultivation, and one of a series of lots of similar form and character, also used by inhabitants of said town for purposes of cultivation, and lying adjoining to each other in the same general range of lots, then the plaintiffs are not entitled to recover. (Given.)

2. If the jury find from the evidence that on the 3d day of March, 1825, Faustin dit Parent designated the lot of which the premises in possession of the defendant at the commencement of this suit are a part, as being confirmed to him by the act of Congress of the 13th of June, 1812, entitled "An act making further provision for settling claims to land in the Territory of Missouri,"

on the ground of inhabitation, cultivation or possession, prior to the 20th day of December, 1803, by proving before the recorder of land titles of said Territory the fact of his cultivation or possession thereof, and the boundaries and extent of said lot; and that said recorder did thereupon issue a confirmation certificate for said lot of Faustin dit Parent, and furnished the surveyor general of said Territory with a list of the lots so proven, in which list was that of the said Faustin dit Present, which lot was afterwards surveyed by the surveyor general, the survey thereof approved by him on the 18th day of March, 1857, and on the 17th day of July, 1857, returned by him to the office of said recorder, who, on the first day of August, 1857, issued his certificate of confirmation therefor, then the plaintiffs cannot recover in this suit. (Given.)

To the giving of the aforementioned instructions the plaintiffs duly excepted. The jury found a verdict for the defendant.

Motion for New Trial.

Within four days the plaintiffs made the following motion for a new trial, filed October 9th, 1857, which is as follows:

St. Louis Circuit Court—October Term, 1857.

The plaintiffs move for a new trial:

1. Because the court admitted incompetent and illegal evidence for the defendant prejudicial to the plaintiffs.

2. Because the court misdirected the jury in matters of law arising on the trial.

FIELD, *for Plaintiffs.*

The court overruled said motion, and plaintiffs duly excepted.

Agreement of Parties.

It is agreed that the public acts referred to in the foregoing bill of exceptions may be read in any appellate court from any printed copy published by authority. It is further agreed that the amount in controversy in this case exceeds two thousand dollars. This bill of exceptions allowed.

JAMES R. LACKLAND,
Judge.

STATE OF MISSOURI,
County of St. Louis, ss.

I, Stephen Rice, clerk of the circuit court within and for the county aforesaid, certify the foregoing to be a true transcript of the record and proceedings in the above entitled cause, as fully as the same now remains on file in my office.

In testimony whereof, I hereunto set my hand and affix the seal of said circuit court at office, in the city of St. Louis, this 27th day of January, A. D. 1858.

[SEAL.]

STEPHEN RICE, *Cl'k.*

Suggestion of Milburn's death, and motion for rule on Def't to show cause, &c.

Afterwards, in said supreme court, at the March term, 1858, the following proceedings were had in this cause, to wit:

The said William Glasgow, junior, and the said William C. Taylor come now and suggest, that since the return of the writ of error in this cause, and before an assignment of errors herein, the said William Milburn has departed this life, and they now move this court to grant a rule upon the above mentioned defendant in error, to show cause on the first day of the next term of this court, or as soon thereafter as counsel can be heard, why the writ of error in this case should not be prosecuted in the name of the surviving plaintiffs, said Glasgow and Taylor.

R. M. FIELD,
For Comm'rs, with Messrs. Bates.

Which said motion was sustained and a rule ordered by the court, and the cause continued until the next term.

Rule on Defendant.

Thereafter, on the 3d day of September, 1858, there issued from the office of the clerk of said court a rule in words and figures as follows:

THE STATE OF MISSOURI, *ss.*

The State of Missouri to the Sheriff of St. Louis county, in said State, greeting:

Whereas, in the case of William Milburn, William Glasgow, jr., and William C. Taylor, commissioners of the sixteenth section, township forty-five north, range seven east, plaintiffs in error, against Elzear Blanchard, defendant in error, it has been suggested to our supreme court of said State at the March term, 1858, that since the return of the writ of error in said cause into said supreme court, and before an assignment of errors had been filed in said cause, the said William Milburn has departed this life: These are, therefore, to command you, that you summon John B. Hortiz, said defendant in error, to be and appear before our said supreme court on the first day of the next term thereof, to be begun and held at the court-house, in the city of St. Louis, on the third Monday in October next, to show cause, if any he have, why the writ of error in the aforesaid cause should not be prosecuted in the name of the surviving plaintiffs in error, the said William Glasgow, jr., and the said William C. Taylor. And have you then there this writ, with your return endorsed thereon.

In testimony whereof, I hereto set my hand and the seal of said court at office, in St. Louis, this 3d day of September, 1858.

[SEAL.]

WM. S. GLANVILLE, *Clerk.*

Return on Rule.

Said writ was duly returned, endorsed as follows, to wit:

Executed this writ in Saint Louis county, on the 9th day of September, 1858, by delivering a copy of the same, as furnished by the clerk, to Elzear Blanchard.

M. S. CERRE, *Sh'ff.*
By GEO. N. STEVENS, *Deputy.*

Appearance of Defendant.

Thereafter, at the October term, 1858, the defendant in error appeared by his attorney, and consented that this cause be revived and prosecuted in the name of the surviving commissioners, the said William Glasgow, junior, and the said William C. Taylor.

Assignment of Errors.

And thereupon the plaintiffs in error file an assignment of error herein, as follows, to wit:

And now come the said surviving plaintiffs in error, and say, that in the record of the proceedings and judgment in this case, it does manifestly appear that the court below committed the following errors, to wit:

1. In admitting illegal evidence to the jury on the part of the defendant below.
2. In refusing apt and proper instructions to the jury moved on behalf of the plaintiffs below.
3. In giving to the jury improper and illegal instructions to the great prejudice of the plaintiffs below.
4. In rendering judgment for the defendant below, instead of rendering the same for the plaintiffs below.
5. In various other particulars patent on the record.

Wherefore, the plaintiffs in error pray that the judgment below may be reversed, and that they may be restored to their just rights, &c. By their attorneys,

FIELD & BATES.

Joinder in Error.

Thereupon, by consent of parties, this cause was continued until the next term. And at the March term, 1859, the defendant in error appeared and joined in error, as follows, to wit:

Defendant in error says there is no such error as above is assigned.

Filed 23d March, 1859.

T. POLK,
For Deft. in Error.

Argued and Submitted.

Afterwards, during said term, the parties again appeared

by their attorneys, and argued this cause and submitted the same to the court for decision.

Judgment of Supreme Court.

Afterwards, during said term, to wit, on the twenty-seventh day of May, 1859, the court rendered judgment in this cause, as follows, to wit:

WILLIAM GLASGOW Junior, and WILLIAM C. TAYLOR, commissioners of the 16th section, township 45 north, range 7 east, of the 5th principal meridian, Plaintiffs in Error,
vs.
ELZEAR BLANCHARD, Def't in Error. } Error to St. Louis Cir. Court.

Now at this day come the parties herein by their respective attorneys, and the court here being now sufficiently advised of and concerning the premises, do consider and adjudge that the judgment aforesaid in form aforesaid by said circuit court rendered be in all things affirmed, and stand in full force and effect. And it is further considered and adjudged by the court, that the said defendant in error recover against said plaintiffs in error his costs and charges herein expended, and have thereof execution.

Opinion of Sup. Court.

And at the same time the court gave a written opinion in said cause, as follows, to wit:

The record in this cause presents the single point touching the conclusiveness of the out-boundary surveys, against any proof of common-field lots not embraced within it; and the case will therefore be disposed of in conformity to previous decisions on this point. The judgment is affirmed, the other judges concurring.

W. B. NAPTON.

Bond on Writ of Error to U. States Sup. Court.

Afterwards, on the 23d June, 1859, a bond was filed in this cause, in words and figures as follows:

Know all men by these presents, that we, James A. Rogers and R. M. Field, are held and firmly bound unto J. Elzear Blanchard in the just and full sum of five hundred dollars, to be paid to the said Elzear Blanchard, his executors, administrators, or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents. Sealed with our seals, and dated this 23d day of June, in the year of our Lord one thousand eight hundred and fifty-nine.

Whereas, lately, at the March term, 1859, of the supreme court

of the State of Missouri, in a suit depending in said court, between Gilliam Glasgow, jr., and William C. Taylor, surviving commissioners of the 16th section in township 45 north, of range 7 east, plaintiffs, and Elzear Blanchard, defendant, judgment was rendered against the said plaintiffs, and the said plaintiffs having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said defendant, citing and admonishing him to be and appear to a Supreme Court of the United States, to be holden at Washington the first Monday of December next:

Now the condition of the above obligation is such, that if the said plaintiffs shall prosecute said writ to effect, and answer all damages and costs if they fail to make good their plea, then the above obligation to be void, else to remain in full force and virtue.

JAMES A. ROGERS, [SEAL.]
R. M. FIELD. [SEAL.]

Approved by William Scott, presiding judge of the supreme court, within and for the State of Missouri, this 23d day of June, A. D. 1859.

WILLIAM SCOTT.

THE STATE OF MISSOURI, *ss.*

I, William S. Glanville, clerk of the supreme court of the State aforesaid, held at St. Louis, certify that the foregoing is a full, true, and complete transcript of the record and proceedings in the case of William Glasgow, jr., and William C. Taylor, surviving commissioners of the sixteenth section, township 45, range 7 east, plaintiffs in error, against Elzear Blanchard, defendant in error, as fully as the same remain of record and on file in my office.

In testimony whereof, I hereto set my hand and the seal of said court, at office, in Saint Louis, this 25th day of August, A. D. 1859. [SEAL.]

WM. S. GLANVILLE,
Clerk.

Citation.

The United States of America to Elzear Blanchard, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Missouri, wherein William Glasgow, jr., and William C. Taylor, surviving commissioners of 16th section, in township 45 north, of range 7 east, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should

not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William Scott, presiding judge of the supreme court of the State of Missouri, this 23d day of June, in the year of our Lord one thousand eight hundred and fifty-nine.

WILLIAM SCOTT.

ST. LOUIS, *Oct.* 25, 1859.

Rec'd a copy of the within this day, with like effect as if served on me by the marshal of the United States for the district of Missouri.

TRUSTON POLK.

Assignment of Errors.

In the Supreme Court of the United States—December Term, 1859.

WILLIAM GLASGOW, Jr., and WILLIAM C. TAYLOR, surviving Commissioners, &c., Plaintiffs in Error,
vs.
ELZEAR BLANCHARD, Defendant in Error.

And now come said plaintiffs in error, and say, that for causes of error in the judgment and proceedings below, they assign the following:

1. The court below allowed improper and illegal evidence to be given to the jury against the plaintiffs, and notwithstanding their objection to the same.

2. The court below gave improper and illegal instructions to the jury, in prejudice of the rights of the plaintiffs.

3. The court below refused proper and legal instructions to the jury, moved on behalf of the plaintiffs.

4. The court below gave judgment for the defendant, whereas it manifestly appears from the record that judgment should have been given for the plaintiffs.

Wherefore the plaintiffs pray for a reversal of the judgment, and that they be restored to their just rights.

By their attorney, L. G. PICOT.

Filed 9th Dec., 1859.